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THE Attorney's Practice IN THE Court of Common Pleas:

OR, AN

INTRODUCTION

TO THE

Knowledge of the Practice of that Court, as it now ſtands on the Regulation of ſeveral late acts of Parliament, Rules and Determinations of the ſaid Court:

WITH

Variety of uſeful and curious Precedents in *Engliſh*, drawn or peruſed by Counſel; and a Complete INDEX to the Whole.

By the Author of *The Attorney's Practice in the Court of King's Bench.*

The **Third Edition,** with large **Additions.**

In TWO VOLUMES.

VOL. I.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's moſt Excellent Majeſty; for D. BROWNE, J. SHUCKBURGH, T. OSBORNE, J. WORRALL, G. HAWKINS, T. TRYE, J. RIVINGTON, W. OWEN, S. CROWDER, J. JOHNSTON, P. DAVEY and B. LAW, and J. RICHARDSON. 1758.

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PREFACE.

THE *Attorney's Practice* in the *Court of King's Bench* having met with a very favourable reception, and been univerſally allowed to be the moſt uſeful book of the kind hitherto publiſhed, the author of it was induced to compile the following work, which he formed on the ſame plan with the former; here-

in are ſet forth under their proper heads the ſeveral acts of parliament relating to the practice, ſuch rules of court as are now in force, adjudged caſes on moſt points of practice, and a great variety of uſeful precedents.

The ſtatutes and rules of the court are not ſet forth in a brief or ſummary way, but the enacting and ordering parts generally at large, ſo that the reader will ſcarce ever have occaſion to apply to the ſtatutes or rules themſelves.

To the acts of parliament, rules of court and adjudged caſes, the author has chiefly confined himſelf in this work, chuſing rather to be ſilent, than to

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ſay any thing for which he had not ſufficient authority, and being cautious of nothing more than leading the young practicer into a miſtake.

The precedents, of which the greateſt part were drawn or peruſed by counſel, are ſuch as will be moſt frequently wanted in the general courſe of buſineſs.

To render this book the more uſeful, a very copious index is added, drawn under a great variety of heads, ſo that the reader may with eaſe apply to any particular point of practice he ſhall want to be informed of.

This work, as well as the former, has been ſo well received

as to produce a Third Edition, which the author has made agreeable to the practice as varied ſince the publication of the former editions, and enlarged with many additional notes and obſervations.

To the ſecond edition was added a new volume of pleadings, a thing deſired by many, and it is hoped, will be acceptable to all who are willing to attain a competent knowledge in their profeſſion; for it is a certain truth, that he can never be an able attorney who is not a good entering clerk, and tolerably well ſkilled in ſpecial pleading. Formerly all attornies drew their own pleadings, and never had occaſion for any aſſiſtance but the

the advice of the moſt learned. This kind of learning, which is now too much neglected, led them into the very reaſons of the practice, and into a knowledge of the common law, which none but a ſpecial pleader can be ſaid to be thoroughly maſter of: An attorney, without being acquainted with ſpecial pleading, can have no other, than a confuſed knowledge of ſuch particular inſtances of practice only as have paſſed through his own hands, and upon the leaſt variation is as much at a loſs as if he never knew any thing of the matter; hence ſpring demurrers, motions, expence and endleſs delays to the ſuitors, and diſcredit to the practicer; for which reaſons the loſs of this branch of learning

learning amongſt the generality of the profeſſion is greatly to be lamented, and the retrieving of it can't be too much recommended.

To this Third Edition, for the rendering the uſe of this work ſtill more extenſive, are added inſtructions for levying *fines*, and ſuffering *common recoveries*; with ſome directions touching *replevins*.

THE

THE Attorney's Practice IN THE Court of Common Pleas.

Of the Juriſdiction of the Court.

ALL pleas are regularly divided into pleas of the crown, and into common or civil pleas. Pleas of the crown are thoſe which concern treaſons, felonies, miſpriſions of treaſons, *&c.* This court is the lock and key of the common law in common pleas, and therefore called the *Court of Common Pleas*, for in this court real actions, whereupon fines and recoveries (the common aſſurances of the realm) do paſs, and all other real actions by original writs, are to be determined. In all perſonal and mixt actions, this court and the court of *King's Bench* have a concurrent juriſdiction.

The juriſdiction of this court is general, and extendeth itſelf throughout all *England*.

Generally all ſuits in this court are founded upon original writs iſſuing out of the *Chancery*, and returnable in this court, whereupon the plaintiff proceeds either to arreſt the defendant, outlaw him, or ſerve him with a copy of proceſs, purſuant to the ſtatutes 12 *G.* 1. *c.* 29. 5 *G.* 2. *c.* 27.

But this court may hold plea on writ of privilege iſſuing originally out of this court at the ſuit of any attorney, officer, miniſter, or clerk of the court intitled to ſuch writ.

It may alſo hold plea by bill, which is in the nature of a petition to the court, againſt any attorney, officer or miniſter, intitled to the privilege of the court.

A knight, citizen, burgeſs, or other perſon intitled to privilege of parliament, may be ſued in this court by original bill, in manner as directed by the ſtatute 12 & 13 *W.* 3. *c.* 3.

This court may, upon proper ſuggeſtions, grant prohibitions to keep, as well temporal, as eccleſiaſtical courts, within their proper bounds and juriſdictions, without any original writ or plea depending; for the common law, which in theſe caſes is a prohibition of itſelf, ſtands inſtead of an original. 12 *Co.* 108.

Actions are alſo removed into this court out of inferior courts of record by writ of *Habeas corpus cum cauſa*, or *Certiorari*; and out of inferior courts not of record, by *Pone*, *Tolt*, *Recordari*, *Accedas ad curiam*, or writ of falſe judgment.

This

This court hath alſo juriſdiction for the puniſhment of its own officers and miniſters, and all other perſons guilty of contempts againſt the rules and orders of the court.

The court conſiſts of a chief juſtice and three puiſne judges, created by letters patent; but no one can be conſtituted a judge of this court, unleſs he be a ſerjeant of the degree of the coif.

Officers of the Court of Common Pleas.

THE *cuſtos brevium* is the firſt or principal officer of the court of *Common Pleas*, and holds his place by grant from the crown; the preſent patentee is the right honorable *George Henry*, earl of *Litchfield*, who executes the ſaid office by *Walter Baynes*, eſq; his deputy. *Cuſtos brevium.* *His appointment.*

The duty of this officer is to record and file in his office all original and judicial writs, and inquiſitions taken by virtue of any ſuch writs, all poſteas after verdicts, and fines, with the concords ſigned by the parties acknowledging the ſame; and the writs of *Dedimus poteſtatem* iſſued for taking the acknowledgment of ſuch fines, with the tranſcripts thereof, *&c.* which fines are by him entered in a book of the ſame term the reſpective writs of covenant are returnable, and the proclamations of ſuch fines are by him indorſed, upon the captions, according to the ſtatute. He is alſo to record and file all writs of entry and ſummons, writs of *Dedimus poteſtatem* for taking warrants of attorney *And duty.*

thereupon, and writs of ſeiſin to ſupport recoveries ſuffered in the ſaid court; to make copies and exemplifications of the ſaid writs and records when required, and to return writs of *Certiorari*, directed to him, for the removing any writs or other records into the court of *King's Bench.*

Prothonotaries. Their Appointment, &c.

There are three prothonotaries of this court, who hold their offices for their reſpective lives, and * are admitted by the chief juſtice of the court for the time being. The ſecond prothonotary is admitted on the nomination of the *cuſtos brevium*, who, in right of his office, has the appointment of the ſecond prothonotary. Each of the three prothonotaries has belonging to his office, one ſecondary, one clerk of the judgments, and one clerk of the dockets. The preſent prothonotaries are *George Cooke*, eſq; firſt, or chief prothonotary; *Lewis Jones*, eſq; ſecond prothonotary, and *Samuel Wegg*, eſq; third prothonotary.

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* *Memorandum quod officium capitalis prothonotarii in banco vacant' poſt ultimum terminum per mortem* Nicolai Rockwood. *Et dominus* Brooke, *capitalis juſticiarius de Banco, dedit officium illud cuidam* Galeard *fratri uxoris ſuæ. Et pro eo quod inidoneus fuit, illud revocavit, et contulit id* Whiteley, *contra voluntatem aliorum juſticiariorum, qui judicabant* Bill *fore magis idoneum.* Mich. 4 & 5 Ph. & Ma. Dyer 150. b. Raſt. Ent. 443. See the oath of a prothonotary. *Raſt. Ent.* 442. See the admiſſion of a ſecond prothonotary, and the admiſſion of a third prothonotary. *Moyle's Entr. fo.* 3.

The

The chief prothonotary adminiſters the oaths to the officers and attornies of the court; enters on record the patents of the juſtices, and the patents, ſurrenders and admiſſions of the other officers of the court. He enters on a remembrance roll the names of all attornies ſworn in court, and makes certificates thereof to the clerk of the warrants, who thereby enters their names in the roll of attornies. He enters all writs of adjournments of the terms; he draws up the general rules of the court, made for regulating and ſettling the practice in the proceedings therein, and cauſes the ſame to be ingroſſed and hung up in the treaſury chamber at *Weſtminſter*, and gives copies thereof to the judges, and to the other prothonotaries, and officers of the court, if required, without any fee. He adminiſters the oaths and declarations taken to the government; and keeps an alphabetical liſt of the names of the perſons taking the ſame; and files in his office the certificates brought in by them; and alſo the rolls on which they ſubſcribe their names. He has the cuſtody of the court-book, in which are entered the names of all cauſes on demurrers, ſpecial verdicts, and other matters that are to be argued in court, and of cauſes that are to be tried at bar, with the reſpective terms, number-rolls, and offices in which they are entered, and takes minutes of the judgment of the court in all cauſes argued therein. *The duty of the chief prothonotary.*

The chief prothonotary is alſo attorney for the city of *London* within this court, and

hath from the city yearly four yards of black cloth to make him a gown; and a livery fee of 1 *l.* 13 *s.* 4 *d.* is paid yearly to him by the ſecondaries of *London*, as deputy-ſheriff.

Duty of the three prothonotaries.

The three prothonotaries, in term-time, attend the ſitting of the court at *Weſtminſter*, for the diſpatch of ſuch matters as ariſe from cauſes entered in their reſpective offices, and to inform the court of the ſtate of ſuch cauſes, and to certify the court in matters of practice when required. Each of the prothonotaries has a publick office in one of the inns of court, at which they reſpectively attend every afternoon, in term-time, and out of term every day (ſundays and holidays excepted) from nine in the morning till one or two, and from four in the afternoon till eight or nine.

It is their duty to enter on record all declarations, pleas, replications, and pleadings ſubſequent, demurrers, joinders in demurrers, and judgments. To enter all bills filed againſt attornies and other privileged perſons, and forejudgers thereon for want of appearance. To ſign writs of attachment, *Habeas Corpus*, *Procedendo*, *Certiorari*, *Venire facias*, *Subpœna*, *Scire facias*, *Capias ad ſatisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias poſſeſſionem*, *Habere facias ſeiſinam*, *&c.* To ſtrike ſpecial juries, and to ſign records of *Niſi prius*. They are to ſee that all common recoveries be carefully ingroſſed on rolls of the court, examined, docketted, and placed in their proper offices, and the writs belonging to the ſame filed with the *cuſtos brevium*

brevium, and to examine all exemplifications of ſuch recoveries.

Perſons committed by the court for contempt are examined on interrogatories by the prothonotaries, who make reports thereon, and on other matters referred to them by the court, and tax bills of coſts, and ſtate the debts and coſts on bills, bonds, mortgages, and other ſecurities, on references made to them by the court, purſuant to the act made in the 4th and 5th years of queen *Anne*, for the amendment of the law. Stat. 4, 5 Ann. c. 16.

The prothonotaries have the cuſtody of all common and plea rolls, and deliver the ſame out, and keep an account of the perſons names to whom the rolls are delivered, that they may be able to call for a return of them, and make caret papers, certifying defaulters, in order to a proſecution, purſuant to ſeveral rules of the court. They keep an account of all rolls received into their offices, after proper entries are made thereon, and keep doggets of all judgments, entries of writs, and other entries, which they carefully examine with the rolls, before they are delivered into the office of the clerk of the eſſoins, or clerk of the warrants, and the writs into the office of the clerk of the *cuſtos brevium*, which are afterwards by the ſaid officers, carried into the treaſury of the court, but the dockets remain in the prothonotaries offices. The prothonotaries likewiſe keep remembrance rolls, on which all rules made in court are entered, and on which all recognizances of bail, appearances, *Scire facias*,

cias's, and *Præcipe's* taken at the bar on common recoveries, are entered.

Secondaries. *Their appointment.*

There are three ſecondaries in this court, one belonging to each prothonotary, who has the nomination and appointment of ſuch ſecondary; which appointment has been uſually for the joint lives of the prothonotary and ſecondary. The preſent ſecondaries of the court, are, Mr. *Henry Fothergill*, ſecondary to *George Cooke*, eſq; chief prothonotary; Mr. *Henry Paramor*, ſecondary to *Lewis Jones*, eſq; ſecond prothonotary; and Mr. *Henry Barnes*, who is ſecondary to *Samuel Wegg*, eſq; the third prothonotary.

And duty.

The ſecondaries in term-time attend the court and the judges in the treaſury, to read all the records, writings, affidavits, petitions, papers, and exhibits; to take minutes of all rules and orders, and draw up the ſame, and take recognizances in court. They enter all commitments of priſoners, diſcontinuances, and ſatisfactions acknowledged upon record, and amend records by order of court. They adminiſter the oaths to priſoners taking the benefit of the late act made for the relief of debtors, with reſpect to the impriſonment of their perſons; prepare aſſignments of ſuch priſoners eſtates and effects, and draw up rules for their diſcharge. On trials at bar they act as aſſociates, that is, call the jury out of, and in court, read the record, call the defendant, read all written evidence, call the jury before a verdict given, and record the verdict, take minutes of all

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ſpecial verdicts, and draw up the ſame, and make copies thereof for the plaintiff, defendant, and judges. They take an account of all fines, and recoveries paſſed, and ſuffered at bar. And in term-time, after the riſing of the court, attend at their offices to draw up the rules and orders made by the court, or by the judges in the treaſury, and enter them on the remembrance rolls, and make copies of them, when required. They enter all rules to declare, plead, reply, rejoin, ſur-rejoin, rebut, ſur-rebut, and join in demurrer, and give rules for the attornies, and other officers of the court to appear to bills filed againſt them. And file and copy all affidavits, papers, and exhibits produced on motions, taxations of coſts, or otherwiſe, and ſuggeſtions and proceedings in ſpiritual courts, when prohibitions are applied for; and copy interrogatories and examinations of perſons committed for contempts. On complaints made by the priſoners of the *Fleet Priſon* againſt the warden, the ſecondaries attend the judges at ſuch places as they appoint, and file, read, and copy all affidavits and exhibits produced on ſuch complaints, and draw up all orders made thereon.

Clerks of the judgments.

Their appointment.

There are three clerks of the judgments, one belonging to and appointed by each prothonotary. The preſent clerks of the judgments are, Mr. *Philip Price*, clerk of the judgments to *George Cooke*, eſq; the chief prothonotary; Mr. *Thomas Buckle*, clerk of the judgments to *Lewis Jones*, eſq; the ſecond pro-

prothonotary; and Mr. —— *Lickbarrow* clerk of the judgments to *Samuel Wegg*, eſq; the third prothonotary.

And duty. It is the duty of theſe officers to draw up all final judgments after inquiſitions taken, verdicts obtained, or nonſuits had at *Niſi prius*, and on demurrers, and iſſues joined upon *Nul tiel record*; and to draw up and enter all continuances neceſſary in the aforeſaid judgments. To draw up the award of every *Decem tales*, and enter the ſame on the roll; to make out writs of *Diſtringas decem tales*, and *Diſtringas juratores*; and to draw up the awards of writs of *Elegit*, and writs of partition, and enter the ſame, with the returns thereof, upon the roll. To enter all ſatisfactions to judgments, when the ſame is done by the order of a judge, and not in open court; and to exemplify any of the abovementioned judgments, if applied for within a year after the ſigning of ſuch judgments. And by the ſtatute 4 & 5 *W. & M.* *c.* 20. they are to deliver over to the clerk of the eſſoins notes in writing of all judgments entered by them reſpectively on verdicts, writs of inquiry, demurrer, and every other judgment for debt or damages.

Clerks of the dockets. *Their appointment.* There are three clerks of the dockets, one belonging to and appointed by each prothonotary. Mr. *Philip Price* is the preſent clerk of the dockets to the chief prothonotary; Mr. *Thomas Buckle* to the ſecond prothonotary; and Mr. *William Robinſon* to the third prothonotary.

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And duty.

They enter upon remembrance all appearances to writs of attachment of privilege, writs of *Scire facias*, bills, and other proceſs, iſſued out of, and filed in the offices of their reſpective prothonotaries. They deliver out to the attornies the rolls whereon pleadings are entered, and put them into a numerical order, when brought back; and make out papers, called caret papers, of ſuch as are wanting, and the attornies names to whom the ſame were delivered, and deliver copies thereof to the clerk of the warrants, and clerk of the eſſoins, to enable them to inform the court thereof. They prepare bail-pieces or recognizances entered into, to attachments of privilege, and other bailable writs iſſuing out of the prothonotaries offices, and attend the court, or a judge, when ſuch recognizances are taken, and when ſuch bails are juſtified, or additional bail is put in, and alſo, when the defendant ſurrenders himſelf in diſcharge of his bail. They make copies of all ſpecial juries ſtruck by the prothonotaries, for the plaintiffs and defendants; and, when required, make copies of bills of coſts, and papers produced before the prothonotaries on references, and of reports made in court by the prothonotaries. They make copies of rules of court from the remembrance rolls of terms that are paſt. They alſo make out certificates of declarations not being filed according to the rules of the court againſt priſoners, in order to their being diſcharged out of cuſtody for want of proceeding; and alſo

alſo certificates of writs of *Recordari*, and writs of falſe judgment, not being filed according to the courſe and practice of the court. And as clerks to the prothonotaries they make out copies of all the ſpecial verdicts for the judges, and attornies concerned therein; and in the abſence of the prothonotaries they perform the common buſineſs belonging to the prothonotaries offices.

Clerks of the reverſals. Their appointment.

Each prothonotary of the court hath a clerk of the reverſals belonging to his office, nominated, and verbally appointed by ſuch prothonotary; Mr. *Philip Price* acts as clerk of the reverſals to the chief prothonotary; Mr. *Thomas Buckle* acts as clerk of the reverſals to the ſecond prothonotary; and Mr. *William Robinſon* acts as the clerk of the reverſals to the third prothonotary.

And duty.

They draw up and enter the reverſals of outlawries, and enter the *præcipe's* thereof on remembrances, and draw up certificates thereof to the outlawry office; and draw up and ingroſs the bail-pieces, or recognizances, in order to ſuch reverſals, and attend the court and judges therewith, and make out the *Superſedeas* when neceſſary.

Clerk of the treaſury. His appointment.

Mr. ——— *Brougham* holds the place of clerk of the treaſury by parol appointment from the lord chief juſtice.

Clerks of the jurats, or under-clerks of the treaſury

Mr. ——————— is clerk of the jurats, or one of the under-clerks of the treaſury, for the counties of *Middleſex*, *Kent*, *Oxford*, *Hereford*, *Southampton*, *Wilts*, *Somerſet*, *Weſtmorland*,

morland, and *Northumberland*, cities of *London*, *Briſtol*, and town of *Southampton*. *and treaſury keeper.*

Mr. ——— ——— is clerk of the jurats, or one of the under-clerks of the treaſury, for the counties of *Cornwall*, *Bucks*, *Surrey*, *Hertford*, *Cambridge*, *Norfolk*, *Leiceſter*, *Derby*, *York*, *Bedford*, *Huntingdon*, *Monmouth*, *Warwick*, *Cumberland*, *Berks*, *Gloceſter*, *Salop*, *Dorſet*, *Northampton*, *Nottingham*, and town of *Nottinghan*, counties of *Suffolk* and *Suſſex*, cities of *York*, *Coventry*, *Norwich*, towns of *Newcaſtle* upon *Tyne*, *Kingſton* upon *Hull*, and borough of *Leiceſter*.

And Mr. ——— is clerk of the jurats, or one of the under-clerks of the treaſury for the county of *Devon*, city of *Exeter*, county of *Lincoln*, and city of *Lincoln*, county of *Worceſter*, and city of *Worceſter*, counties of *Eſſex*, *Stafford*, *Rutland*, and city of *Gloceſter*.

The clerks of the jurats, or under-clerks of the treaſury, are admitted by the lord chief juſtice of the court, for the ſeveral counties, cities, and towns in their reſpective diviſions, and hold their places for their lives; Mr. *George Stubbs* is the treaſury-keeper, and holds his place alſo by the parol appointment of the lord chief juſtice. *Their appointment.*

The duty of the clerk of the treaſury is to have the care and cuſtody of the treaſury of the ſaid court, which doth contain the records of the ſame court of all common recoveries, entries of the money which the king hath upon fines; all judgments and iſſues, with the pleadings and verdicts thereon, *And duty.*

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inrolments of deeds, warrants of attorney, filacers, and exigenters rolls, containing the entries of writs iſſuing out of their reſpective offices, from the firſt year of king *Henry* the eighth incluſive, down to the preſent time, bound up in diſtinct bundles, and digeſted in their due order and courſe of time. He is alſo to ſign all copies taken from the rolls, and all records of *Niſi prius* in the ſaid court, and to keep a file of all rules and orders relating to the ſaid rolls. And no exemplifications, (except exemplifications of fines and common recoveries of the preſent or next precedent term) are to be ſealed, unleſs they are firſt ſigned and examined by the clerk of the treaſury. *Mich.* 1654.

The duty of the clerks of the jurats is to make and examine copies of the ſaid records in their reſpective counties; and to amend records on receipt of orders for that purpoſe; to write and examine the jurats of the records of *Niſi prius* in the ſaid court, and to exemplify verdicts, judgments, and old recoveries.

The duty of the treaſury-keeper is to bind up the records in diſtinct bundles every term, and keep them in their proper order and ſeries of time, and ſhew them when required.

Filacers. The preſent filacers of this court, are,

—— *Heather* for the counties of *Southampton*, *Wilts*, and town and county of *Southampton*. The office is executed at Mr. *Hull*'s chambers, N°. 2. *Clifford's Inn*.

——*Evit*

—— *Evit* for the counties of *Weſtmorland*, *Cumberland*, *Northumberland*, and town and county of *Newcaſtle* upon *Tyne*. Office executed in *Crane Court*, *Fleet Street*.

—— *Sibthorpe* for the county and city of *Lincoln*. The office is executed in *Fetter Lane*, oppoſite the *Rolls Buildings*.

William Boycott for the counties of *Eſſex* and *Hertford*; his deputy is Mr. *Barbor* in *Fetter Lane*.

John Staples, at N°. 2. in *Eſſex Court* in the *Middle Temple*, for the counties of *Glouceſter*, *Worceſter*, *Hereford* and *Cornwall*, and the cities of *Glouceſter* and *Worceſter*.

——— *Lake* for the county and city of *York*, and county of the ſame city, and town of *Kingſton* upon *Hull*, and county of the ſame town. The office is executed by Mr. ———, in *Mitre Court*, *Fleet Street*.

——— *Peyton* for the counties of *Surrey*, *Suſſex*, *Kent* and the city of *Canterbury*. The office is executed in *Caſtle Yard*, *Holborn*.

John Martin for the counties of *Somerſet*, *Dorſet*, city of *Briſtol* and town of *Pool*; his deputy is Mr. *Bold*, in *Eſſex Street*.

Mr. *Hancock* for the counties of *Bedford*, *Berks*, *Buckingham* and *Oxford*. His deputy is Mr. *Collier* at N°. 12. in *Staple's Inn*.

—— *Willes*, eſq; for *London* and *Middleſex*. The office is executed by Mr. *Grainger*, in *Chancery Lane*.

—— *Milward* for the counties of *Salop*, *Stafford*, *Northampton* and *Rutland*, and city of *Litchfield*. The office is executed by Mr. *Barbor*, in *Fetter Lane*.

George Green, N°. 8. *Staple's Inn*, for the county of *Norfolk*, city of *Norwich*, and county of the ſame city.

—— *Lenten* for the county of *Suffolk*. His deputies are Meſſieurs *Moſs* and *Davenport*, over the curſitors office in *Chancery Lane*.

Robert Fawcet for the county of *Devon*, city of *Exeter*, and county of the ſame city. This office is executed at N°. 11. *Clifford's Inn*.

William Ward for the counties of *Cambridge* and *Huntingdon*; the office is executed at Mr. *Green*'s chambers, N°. 8. in *Staple's Inn*.

—— *Keepe* for the counties of *Derby*, *Leiceſter*, *Nottingham*, *Warwick*, city of *Coventry*, and town of *Nottingham*. This office is executed by Mr. *Steele*, in *Fetter Lane*, near the *Rolls Buildings*.

Francis Gwynn, eſq; for the county of *Monmouth*. The office is executed by Mr. *Fiſher*, in *Lyon's Inn*.

Their appointment. The ſeveral perſons above-named (except the filacer for *Monmouth*, *vide poſtea*, *fol.* 26.) have been appointed, and are ſeiſed of their ſaid offices by grants from the reſpective chief juſtices of the court for the time being, To hold for their natural lives as their freehold.

And duty. Their duty is to make out meſne proceſs upon original writs returnable in this court.

They alſo enter appearances, and file and enter bails, and attend the judges or the court on putting in, and juſtifying bail, and on defendants ſurrendering in diſcharge of their bail; and alſo take affidavits of debts in order

order to hold the defendants to bail, and affidavits of the ſervice of proceſs; and file bills brought againſt perſons having privilege of parliament, and make out the ſubſequent proceſs thereon before appearance.

Clerk of the warrants, &c.

The clerk of the warrants, inrolments, and eſtreats is *Nathaniel Rowe*, eſq; who was admitted into the ſaid office by Sir ———, lord chief juſtice of this court.

His appointment.

And duty.

He files all warrants of attorney upon judgments and iſſues; and all warrants in outlawries, and writs of covenant; and on receiving the warrants of attorney he ſtamps all paper-judgments, *Pluries capias*, and writs of covenant, and enters *Ne recipiatur* againſt filing ſuch warrants.

All the common rolls, or records of judgments, and iſſues on trials by *Niſi prius* of every term, are delivered by the ſeveral prothonotaries into this office, the latter end of the ſubſequent term, that the clerk of the warrants may inſpect the ſame, and eſtreat all fines and amerciaments upon ſheriffs, and others, that he ſhall find amongſt the ſaid records, and the rolls are delivered by him to the clerk of the eſſoins. Every deed acknowledged in this court is inrolled in this office, and docketted in books for the benefit of ſearches, and then delivered to the clerk of the eſſoins. The king's ſilver rolls, or poſt-fines of every term are brought the ſubſequent term to this office, and are eſtreated; and the laſt day of every term the clerk of the warrants delivers the eſtreat to the puiſne judge of the court, and attends him to the

court of *Exchequer*, when the ſaid judge delivers the eſtreats to the lord chief baron, and the clerk makes oath before the court, that they are rightly eſtreated and examined. All common recoveries are brought to this office from the prothonotaries, and are docketted for the benefit of ſearches. There is a roll alſo kept in this office of the names of all perſons that are admitted attornies of this court, with an account by what judge each attorney was admitted, and at what time and place, and the place of his abode. This roll is wrote over every *Michaelmas* term, in order to keep an account of all forejudgers againſt attornies that are ſued for debts, or otherwiſe, and of their being reſtored again to their privilege by rule of court, or judge's order. And all perſons have recourſe to the roll without fee or reward. He alſo ſtamps attachments and writs of privilege for attornies. The clerk of the warrants is alſo one of the officers appointed by the ſtatute for the publick regiſtring of deeds, *&c.* in the county of *Middleſex*.

Clerk of the eſſoins.

His appointment.

The office of clerk of the eſſoins is in the appointment of the lord chief juſtice, and has uſually been granted for life. The preſent clerk is Mr. *John Barnardiſton*, in *Serle Street*, near *Lincoln's Inn*.

His duty.

Eſſoins are entered in this office in all real actions, and other actions, wherein, by the practice of the court, eſſoins lie; and in caſe the defendant doth not eſſoin by the time limited by the rules of the court, the plaintiff may enter in this office a *Ne recipiatur*

piatur eſſoin. And after an eſſoin is caſt by the defendant, it is the plaintiff's buſineſs to adjourn the eſſoin, in default whereof, and a rule being given for that purpoſe, the defendant may ſign a *Non pros*; which rule and *Non pros* are given in this office on rolls kept for that purpoſe.

In this office all judgments in the court of *Common Pleas* are docketted, purſuant to ſtat. 4 & 5 *W.* & *M. c.* 20. and all rolls belonging to the ſeveral officers of the ſaid court, are mark'd, number'd, and deliver'd out to them; and when the proper entries are made thereon they are returned into this office, and carried by the ſaid clerk of the eſſoins to the treaſury at *Weſtminſter*, and there bound up in proper bundles. He alſo provides parchment for the ſaid rolls, and the chief juſtice of the court for the time being pays him for the ſame.

Clerk of the juries. *His appointment.*

The office of the clerk of the juries is in the gift and nomination of the *Cuſtos brevium* for the time being. The preſent clerk is Mr. —— *Bever*. Mr. *Harriſon*, at N°. 8. in *New Inn*, is his deputy.

And duty.

The duty of this officer is to make out writs of *Habeas corpora juratorum*, for trials of iſſues in *London* and *Middleſex*, and at the aſſizes in the country.

The return office, and office of inrolment of writs for fines and recoveries. *Officer's appointment.*

The return office and office of inrolment of writs for fines and recoveries, is in the nomination of the three puiſne judges of this court, by virtue of an act of parliament made in the 23d year of the reign of queen *Elizabeth*. Mr. *Henry Barnes* is the preſent clerk of this office.

His duty as clerk of the inrolment office.

By ſtatute 23 *Eliz. c.* 3. §. 1. Every writ of covenant, and other writ, whereon any fine ſhall be levied, the return thereof, the *Dedimus poteſtatem* for acknowledging ſuch fine, the return thereof, the concord, note, and foot of every ſuch fine, the proclamation, and king's ſilver, and every original writ of of entry in the *Poſt*, or other writ whereon any common recovery ſhall be ſuffered, or paſſed, the writs of ſummons *ad warrantizandum*, every warrant of attorney to be had, as well of every demandant and tenant, as vouchee, that ſhall be extant, and being, may, upon requeſt of any perſon, be inrolled, and the inrolment ſhall be of as good force in law, for ſo much as ſhall be inrolled, as the ſame being extant ought to be.

§. 6. There ſhall be an office for the inrolment aforeſaid, which ſhall be an office for ever, called *The office of inrolment of writs for fines and recoveries*; and the juſtices of the *Common Pleas* (other than the chief juſtice) ſhall have the care and charge of the inrolments aforeſaid, and ſhall enjoy the ſaid office, and the diſpoſition thereof, and carefully ſee to the execution thereof, and in conſideration of their charges, pains, *&c.* ſhall have the ſums following, *viz.* for the inrolment and examination of every fine, and the parts thereof, 6 *s.* 8 *d.* For the inrolment of the ſeveral parts of a recovery, and examination thereof, 6 *s.* 8 *d.* For the exemplification of the inrolment of a fine 5 *s.* For the exemplification and return of every writ of entry, ſummons *ad warrantizandum*, and warrants, 5 *s.* For the ſearch of the rolls

for one year 4*d.* And for the copy of one ſheet of paper, containing fourteen lines, 4*d.*

Mr. *Barnes* returns all writs of covenant, entry, ſummons, and ſeiſin, in the names of the ſheriffs of the ſeveral counties, cities, and vills in *England*; and makes regular entries in books, provided at his own charge for that purpoſe, of the counties, cities, vills, parties names, and places where the premiſſes lay which are contained in ſuch writs; and alſo the ſeveral returns of all ſuch writs, except writs of covenant, together with the names of the attornies concerned in proſecuting the ſame, according to the antient method uſed in the ſaid office. *As clerk of the return office.*

But the applying for inrolments and exemplifications in this office hath been diſuſed many years.

The clerk of the king's ſilver is *William Daw*, eſq; who was admitted into this office by Sir *Peter King*, late lord chief juſtice of this court, on the ſurrender of *Henry Ludlow*, eſq; *Clerk of the king's ſilver.* *His appointment.*

This officer claims it to be his duty, to inſpect and ſee that all fines paſſed in his office have regularly paſſed through the ſeveral offices, conformable to the uſage and cuſtom of the court; to enter the whole of all fines, together with the poſt-fine paid thereon, into books which remain in the office as records, for the benefit of ſuch as have occaſion to ſearch for fines; and alſo to indorſe the poſt-fines on the writs of covenant, and ingroſs the entries of all fines on record, with the poſt-fines thereof; which records are *And duty.*

eſtreated into the court of *Exchequer*, in order to collect the poſt-fines. He is alſo to ſtop all ſuch fines, againſt the paſſing of which caveats are entered, and file ſuch caveats, with all rules of courts, judges orders, and affidavits of the cogniſors being alive, where captions have been taken above twelve months before the fines are brought to his office.

All caveats, and orders for ſtopping any fines, ſhall be renewed every term, and copies thereof left with the clerk of the king's ſilver, for which he is to demand only his antient fee of 3*s.* 4*d.* the term. And in default thereof all caveats that ſhall not be ſo renewed ſhall loſe their force and effect. *Paſch.* 29 *Car.* 2.

Where a raſure in the day or year ſhall appear in the caption of a fine, it ſhall not paſs this office without an *Allocatur* from a judge. *Paſch.* 9 *Annæ.*

Chirographer. The office of chirographer is held by letters patent from the crown, and *James Colebrooke*, eſq; is the preſent patentee, under whom *Eliſha Biſcoe*, eſq; is appointed ſecondary to officiate in the ſaid office. There is a regiſter and record-keeper belonging to the ſaid office, and the chirographer appoints certain clerks, for the ſeveral counties in *England*.

His appointment.

And duty. The chirographer draws up, and makes out, from all parts of the fine, the final concord, properly called the fine itſelf, and ingroſſes a record thereof, called the chirograph, or foot of the fine; and one other record thereof, called the note of the fine; and

and from the ſaid chirograph, or foot of the fine, the chirographer's clerks ingroſs two indentures, one whereof is intended for the conuſee, and the other for the conuſor, each of which records and indentures contain the whole of the fine, and are both examined, with all the parts of the fine, by the chirographer's ſecondary; and the parts of the fine, and alſo the records, are openly read and proclaimed in court the ſame term the fine is brought into the chirographer's office, and alſo in the three following terms, the chirographer enters every fine in a publick book, and upon rolls of parchment which are hung up in the court of *Common Pleas* on the firſt day of the next term, after the fine is brought into the ſaid office, and which continue hung up in the court during the whole term, for every perſon's inſpection. The ſame fines are alſo entered in another book kept by the chirographer's regiſter, for publick inſpection, and after proclamation of ſuch fines he ingroſſes the four proclamations on each chirograph, and delivers the ſame with the *Dedimus* and concord of the fine to the *Cuſtos brevium*, to be filed by him; and files the writ of covenant, and the other records of the fine in his own office. Stat. 23 *El. c.* 3. §. 7.

Exigenter. The office of exigenter is executed by Mr. ————, but under what appointment I have not been able to learn.

His duty. It is his duty to make exigents and proclamations upon *Pluries capias's*, in order to proceed to the outlawry.

Clerk of the ſuperſedeas to the exigent. His appointment.

The office of clerk of the *Superſedeas* to the exigent is executed by Mr. *Robert Morris*, who was admitted into this office by grant or deputation from his father Mr. *Henry Morris*, to hold to him and his heirs for ever.

And duty.

It is his buſineſs to ſign all writs of *Superſedeas* to *Exigents quia improvide*, *&c.* in the ſaid court, to prevent a perſon's being outlawed or waived, againſt whom an exigent has iſſued.

Clerk of the outlawries.

His appointment.

The office of clerk of the outlawries is incident to the office of his majeſty's attorney general, and always executed by ſome perſon appointed by the attorney general for the time being. The preſent clerk of the outlawries is *Robert Salkeld*, eſq;

And duty.

It is the duty of this officer to make out all writs of *Capias utlagatum*, ſequeſtrations of eccleſiaſtical benefices in all perſonal actions in the ſaid court, after the return of the exigent, a ſhort note whereof is entered in a book kept for that purpoſe, expreſſing the plaintiff's and defendant's names, and the defendant's addition, with the cauſe of action and return. And therein are likewiſe made entries of all reverſals of outlawries, and the time thereof, in which books all perſons may ſearch for outlawries, and ſee which are in force or reverſed, and have certificates thereof, in order to diſcharge a ſeizure of lands made by virtue thereof; or ſatisfy any court or perſon touching the ſame, and may have a copy of the *Præcipe* of any outlawry, to plead to, and reverſe the ſame. Inquiſitions taken on ſpecial writs of *Utlegatum* are tranſmitted

tranſmitted into this office, and are here exemplified upon rolls ſigned by the clerk of the outlawries, and then carried into the office of the king's remembrancer of the court of *Exchequer*, and there filed of record, and the inquiſitions themſelves and writs of exigent are filed with the *Cuſtos brevium*.

Prothonotary, &c. for Monmouth.

The offices of prothonotary, ſecondary, clerk of the judgments, clerk of the dockets, exigenter, clerk of the juries, filacer and clerk of the reverſals for the county of *Monmouth*, were by his late majeſty king *William* III. by letters patent under the great ſeal, granted to *Francis Gwynn*, eſq; who, or his repreſentative, executes the ſame by Mr. *Richard Fiſher* his deputy.

His appointment.

And duty.

He does the ſame duty as the like officers in this court do for the reſt of the counties in *England*.

Seal office.

His appointment.

And duty.

The moſt noble *William* duke of *Cleveland* is ſeiſed in fee-tail of this office, and claimeth the receipt of the revenue ariſing for the ſealing of writs, exemplifications, and other things whatſoever ſealed with the ſeal of this court. Mr. ———— is his grace's deputy, to take care of the ſaid office, and receive the profits thereof.

Clerk of the errors.

His appointment.

The office of clerk of the errors is in the nomination of the chief juſtice of the court for the time being, and has been uſually granted by verbal appointment to hold during the pleaſure of the chief juſtice. Mr. *Edmund Wilſon* is clerk of the errors to the right honourable the preſent lord chief juſtice.

The

And duty. The clerk of the errors, as deputy or clerk to the lord chief juſtice, has the allowance and receipt of all writs of error brought upon judgments given by this court, and gives certificates thereof, and marks the judgment roll, that a writ of error is allowed, and makes out writs of *Superſedeas* when required, and enters and inrols recognizances of bail taken on writs of error, and makes out writs of *Scire facias* thereon, and gives rules for putting in, and juſtifying bails, and gives certificates of the neglects thereof; and alſo gives rules for plaintiffs in error to certify the records, and makes tranſcripts of the records and judgments, and tranſmits the ſame into the court of *King's Bench*, and enters *Mittiturs* on the rolls, importing that ſuch records are removed into the *King's Bench*, and ſigns, and enters *Non-proſſes* for defaults of plaintiffs in error, certifying their records. He hath alſo the allowance and return of all *Certiorari's* directed to the lord chief juſtice, for certifying records from this court into any other.

Judges clerks. The judges clerks are verbally appointed by their reſpective judges, to continue during pleaſure.

And duty. The duty of theſe clerks is to ingroſs bail-pieces on writs of *Habeas corpus*, and indorſe commitments on the back of the return, and to draw up ſurrenders of perſons ſurrendering themſelves in diſcharge of their bail, and to ingroſs bail-pieces on writs of *Certiorari*, to enter all ſuch bail-pieces, as likewiſe to enter the commitments and ſurrenders

renders in books kept for that purpoſe (which books perſons are at liberty to inſpect without fee or reward.) To take recognizances of bail acknowledged before their reſpective judges; to read over to the parties the contents of all fines and warrants of attorney for ſuffering common recoveries, and admiſſions of infants to ſue or defend by prochein amy, or guardian, and to write the captions thereon, to ingroſs the returns of writs of *Dedimus poteſtatem* directed to their reſpective judges; to write the *Allocatur* of a fine taken before commiſſioners upon oath of the due caption thereof, and to write the captions of deeds acknowledged in or out of court to be inrolled, and to adminiſter the oaths to perſons making affidavits, or bail juſtifying, and to draw up ſummonſes and orders made by their reſpective judges.

The clerks to the lord chief juſtice make out commiſſions for taking affidavits and ſpecial bails, and file the approbations ſigned by the puiſne judges, in order for ſuch commiſſions, and enter the names of the commiſſioners ſo appointed in a book kept for that purpoſe.

Aſſociate at Niſi prius *in* London *and* Middleſex.

The office of aſſociate at *Niſi prius* in *London* and *Middleſex* is in the appointment of the lord chief juſtice, and has been generally granted by parol, to hold during pleaſure only. The preſent aſſociate is Mr. *Thomas Lloyd.*

His appointment.

And duty.

The duty of this officer is to wait on the lord chief juſtice, when he appoints the days of ſittings at *Niſi prius*, and to make copies thereof,

thereof, which are ſtuck up in the prothonotaries offices, and in *Weſtminſter Hall*, to attend the court during the ſittings, and draw out of the box the names of the jurors, and record their appearances and defaults, and return the ſame. To read the record, and all written evidence, and to take down the minutes of facts, and enter the records in a book; record verdicts, return *Poſteas*, and draw up orders of the court of *Niſi prius*, and make copies for each ſide, to attend with the jury to take a private verdict, and draw up and enter the ſame on the *Poſtea*, and make out copies thereof.

Marſhal at Niſi prius *in* London *and* Middleſex. *His appointment.*

The office of marſhal at *Niſi prius* in *London* and *Middleſex* is alſo in the nomination of the lord chief juſtice, and has been time immemorial granted by parol appointment, to hold during the pleaſure of the lord chief juſtice. The preſent marſhal is Mr. *Robert Fawcett.*

And duty.

This officer is to attend the lord chief juſtice of this court, at all ſuch times as his lordſhip ſits to try iſſues depending in this court, by writ of *Niſi prius*, either in the county of *Middleſex* or city of *London*. He enters the names of all cauſes ſet down to be tried for the ſaid city and county, in a book kept and provided by him for that purpoſe, which he carries down with him every day in term-time, to *Weſtminſter*, that all attornies may have recourſe to it to enter their cauſes, to inſpect and ſee what cauſes are entered, and at proper times to enter *Ne recipiatur*; and in the afternoon this book is kept

kept at the lord chief juſtice's chambers for the ſame purpoſe. During the time appointed for trials in the ſaid cauſes he perſonally attends the court during the whole time of their ſitting, to receive the records and writs, and mark them. The marſhal firſt calls the name of the cauſe, and then delivers up the record to the lord chief juſtice, and ſits under him, to be ready, upon all occaſions, to receive his commands, to receive and withdraw records and writs, and to mark any that are left untried, as *Remanets* to be tried at the next ſitting.

Cryer at Niſi prius *in* London *and* Middleſex.

The office of cryer at *Niſi prius* in *London* and *Middleſex* is alſo in the gift of the lord chief juſtice for the time being, and has been uſually granted by parol appointment, to hold during pleaſure. Mr. *Thomas Jeffe-ryes* is cryer to the preſent lord chief juſtice.

His appointment.

And duty.

His duty is to call the jurors, and ſwear them, and all witneſſes produced on ſuch trials.

Chief proclamator.

His appointment.

Heneage Walker, eſq; hereditary proclamator of this court, granted to *John Walker*, eſq; the office of mareſchal proclamator, and barrier of this court, with all fees, *&c.* to hold to him and his heirs for ever. There are four perſons who act as cryers of the court, one of which is alſo court-keeper, and another porter of the court: Which cryers, court-keeper, and porter, are deputies to the chief proclamator.

And duty.

The duty of the proclamator and barrier is by himſelf, or deputies, to attend the court of

of *Common Pleas* at *Weſtminſter*, and make proclamations, *&c.*

The four cryers. Their appointment. And duty.

The cryers are appointed by deputation from the chief proclamator.

Their duty is to attend the court, to adminiſter the oaths to juries, witneſſes, bails, and perſons making affidavits; to hand rules, affidavits, *&c.* from the ſerjeants to the proper officers, to bring records into court as they are wanted, to call attornies on bills being filed againſt them, to take recoveries from the bar, and get them entered in the proper prothonotaries offices to which they belong, proclaim the eſſoins on the return-days, make proper adjournments, *&c.*

Court-keeper. His appointment. And duty.

The court-keeper is appointed by the chief proclamator.

His duty is to take care of the court, and that the tapeſtry and cuſhions be kept clean, the court waſhed, matted and cleaned, and to take care of the acts of parliament, and other books made uſe of in court.

Porter of the court. His appointment. And duty.

The porter of the court holds his place by the appointment of the chief proclamator.

His duty is to attend the judges in court, hang out the fines every day, take care of them; and to do other buſineſs as occaſion requires.

Warden of the Fleet. *His appointment. And duty.*

The warden of the *Fleet* priſon is *John Eyles*, eſq; appointed by letters patent to hold during pleaſure.

His duty is to receive, and have the cuſtody of all priſoners committed by this court to the *Fleet* priſon.

The

The preſent clerk of the papers and rules of the *Fleet* priſon is Mr. ——————, who holds his place by grant or appointment of the warden of the *Fleet*.

Clerk of the papers and rules of the Fleet Priſon. *His appointment.*

It is his buſineſs to receive and enter, in books kept for that purpoſe, the commitments of priſoners committed to the ſaid priſon by this court, to enter declarations delivered to the turnkey of the priſon againſt priſoners, and to enter and file the diſcharges of priſoners, and to give certificates thereof, and return writs of *Habeas corpus*, and other writs directed to the warden, and enter the ſame in a book kept for that purpoſe, and alſo to give certificates of charges againſt priſoners, and certificates of day-rules granted to priſoners by the court. *And duty.*

There are two tipſtaffs attendant on this court who are admitted by deputation from the warden of the *Fleet*.

Tipſtaffs. Their appointment.

They attend the judges whilſt ſitting in court, and in the afternoon at their chambers, and out of term they attend there morning and afternoon. One of them alſo attends the chief juſtice at the ſittings of *Niſi prius* at *Weſtminſter* and in *London*, and on the circuits. Their duty is to receive all priſoners committed in court, or at a judge's chambers, and from thence to carry them to the *Fleet* priſon, and deliver them to the turnkey there; and alſo to bring up priſoners to the court, or before a judge, on a *Habeas corpus*, or rule of court for that purpoſe. *And duty.*]

The

Commiſſioners for taking affidavits, concerning matters in this court, to be appointed by the judges.

The judges of this court, or any two of them, whereof the chief juſtice to be one, ſhall and may, by one or more commiſſion or commiſſions, under the ſeal of this court, from time to time, as need ſhall require, impower what and as many perſons as they ſhall think fit and neceſſary in all and every the ſeveral ſhires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every ſuch affidavit and affidavits as any perſon or perſons ſhall be willing and deſirous to make before any of the perſons ſo impowered, in or concerning any cauſe, matter, or thing depending, or any wiſe concerning any of the proceedings in the ſaid court, as maſters of *Chancery* in extraordinary do uſe to do. And any judge of aſſize in his circuit may take and receive any affidavit or affidavits as any perſon or perſons, ſhall be willing and deſirous to make before him in or concerning any cauſe, matter or thing, depending or in any wiſe concerning any proceedings in the ſaid court: Which ſaid affidavits taken as aforeſaid, ſhall be filed and then read and made uſe of in the ſaid court to all intents and purpoſes as other affidavits taken in the ſaid court now are; and all and every affidavit and affidavits taken as aforeſaid, ſhall be of the ſame force as affidavits taken in the ſaid court now are; and all and every perſon and perſons forſwearing him, her or themſelves in ſuch affidavit or affidavits, ſhall incur and be liable unto the ſame penalties as if ſuch affidavit or affidavits had been

Any judge of aſſize in his circuit may take ſuch affidavit.

Affidavit to be filed, and then read and uſed, &c.

Penalty of perjury in ſuch affidavits.

been made and taken in open court. *Stat.* 29 *Car.* 2. *c.* 5. §. 2.

For the taking of every ſuch affidavit, the perſon or perſons ſo impowered and taking the ſame, ſhall for ſo doing receive only the ſum or fee of 12 *d.* and no more. *Same Stat.* §. 3. *Fee for taking ſuch affidavits.*

The juſtices of this court or any two of them, whereof the chief juſtice to be one, may by one or more commiſſion or commiſſions under the ſeal of this court, from time to time, as need ſhall require, impower ſuch and ſo many perſons, other than common attornies and ſolicitors, as they ſhall think fit and neceſſary in all and every the ſeveral ſhires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every ſuch recognizance or recognizances of bail or bails, as any perſon or perſons ſhall be willing and deſirous to acknowledge or make before any of the perſons ſo impowered in any action or ſuit depending in this court, in ſuch manner and form, and by ſuch recognizance or bail-piece as the juſtices of this court have uſed to take the ſame, which ſaid recognizance or recognizances of bail or bail-piece ſo taken as aforeſaid ſhall be tranſmitted to ſome or one of the juſtices of this court, who upon affidavit made of the due taking of the recognizance of ſuch bail or bail-piece, by ſome credible perſon preſent at the taking thereof, ſuch juſtice ſhall receive the ſame upon payment of ſuch fees as have been *Commiſſioners for taking bails in any ſuit in this court, to be appointed by the judges.* *Recognizances to be tranſmitted to a judge of the court.* *Affidavit of the due taking, &c.*

uſually received for the taking of ſpecial bails by the juſtices clerks, and other the officers of this court; which recognizance of bail or bail-piece ſo taken and tranſmitted, ſhall be of the like effect as if the ſame were taken *be bene eſſe*, before any of the ſaid juſtices; for the taking of every which recognizance or recognizances of bail or bail-piece, the perſon or perſons ſo impowered ſhall receive only the ſum or fee of 2*s.* and no more. *Stat.* 4 *W. & M. c.* 4. §. 1.

Fee for taking, &c.

Judges to make rules for juſtifying, &c.

The juſtices in this court ſhall make ſuch rules and orders for the juſtifying of ſuch bails, and making the ſame abſolute, as to them ſhall ſeem meet; ſo as the cognizor or cognizors of ſuch bail or bails be not compelled to appear in perſon in this court to juſtify him or themſelves: But the ſame may and is hereby directed to be determined by affidavit or affidavits taken before the ſaid commiſſioners, who are hereby impowered and required to take the ſame, and alſo to examine the ſureties upon oath touching the value of their reſpective eſtates, unleſs the cognizor or cognizors of ſuch bail do live within the cities of *London* and *Weſtminſter*, or within ten miles thereof. *Same Stat.* §. 2.

The ſame to be by affidavit taken before a commiſſioner.

Unleſs, &c.

Any judge of aſſize in his circuit may take ſuch bail.

Any judge of aſſize in his circuit may take and receive all and every ſuch recognizance and recognizances of bail or bails, as any perſon ſhall be willing and deſirous to make and acknowledge before him, which being tranſmitted in like manner as aforeſaid, ſhall (without oath) be received in

manner

manner as aforeſaid, upon payment of the uſual fees. *Same Stat.* §. 3.

Acknowledging bail in the name of any other not privy or conſenting, felony.

Every perſon who ſhall acknowledge, or procure to be acknowledged, any fine, *&c.* recognizance or recognizances, bail or bails, *&c.* in the name of any other perſon not privy or conſenting to the ſame, and being thereof convicted, ſhall be adjudged to be a felon, and ſuffer death, *&c.* without benefit of clergy. *Stat.* 21 *Jac.* 1. *c.* 26. 1 *H. H. P. C.* 696. *Et vide Stat.* 4 *W. & M. c.* 4. §. 4. Whereby perſonating another before thoſe who have authority by that act to take bail, ſo as to make him liable to the payment of any ſum of money in that ſuit or action, is made felony.

Attornies of the court.

No one to act as an attorney, unleſs ſerved five years clerkſhip.

BY the ſtatute * 2 *Geo.* 2. *c.* 23. no perſon ſhall be admitted to act as an attorney, ſue out any proceſs, or defend any action in this court, unleſs he ſhall have been bound by contract in writing to ſerve as a clerk for five years to an attorney duly admitted, as by the ſtatute is directed, and for the ſaid term of five years ſhall have continued in ſuch ſervice, and then be examined, ſworn, admitted and inrolled.

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* This act, with the alterations and amendments made by *ſtat.* 12 *Geo.* 2. *c.* 13. and *ſtat.* 22 *Geo.* 2. *c.* 46. is continued by the ſaid *ſtat.* 22 *Geo.* 2. *c.* 46. until 24 *June* 1757.— And from thence to the end of the then next ſeſſion of parliament.

If his maſter ſhall die, or the contract be vacated, before the five years are expired, then to ſerve the remainder of the five years with another attorney.

If any attorney, with whom any perſon ſhall be bound by contract in writing to ſerve as aforeſaid, ſhall die before the expiration of ſuch five years; or if ſuch contract ſhall by mutual conſent be vacated, or ſuch clerk be legally diſcharged by rule or order of court before the expiration of ſuch five years, then if ſuch clerk ſhall by contract in writing ſerve as a clerk to ſome other attorney, admitted as aforeſaid, during the remainder of the ſaid five years, ſuch ſervice ſhall be as effectual as if he had ſerved five years to the perſon to whom he was originally bound. *Same ſtat.*

Judges to examine his fitneſs and capacity before admiſſion.

The judges, before they admit ſuch perſon, are to inquire touching his fitneſs and capacity, and if thereby ſatisfied, and not otherwiſe, are to adminiſter to him, in open court, the oath after-mentioned, and cauſe him to be admitted an attorney, and his name to be inrolled, without fee or reward, except 1 *s.* for adminiſtring the oath. *Same ſtat.*

The oath.

I *A. B.* do ſwear, That I will truly and honeſtly demean myſelf in the practice of an attorney, according to the beſt of my knowledge and ability.

So help me God.

A Quaker on taking his ſolemn affirmation, may be admitted an attorney.

Any perſon being one of the people called Quakers, having ſerved a clerkſhip with an attorney or ſolicitor, and being qualified as by ſtatute 2 *Geo.* 2. is required, may, on taking his ſolemn affirmation inſtead of the oath by the ſaid act directed, before ſuch judges, and others who are to adminiſter the ſaid

ſaid affirmation, be admitted and inrolled as an attorney or ſolicitor, as if he had taken the ſaid oath. *Stat.* 12 *Geo.* 2. *c.* 13. §. 8.

Attornies to be inrolled.

The clerk of the warrants of the *Common Pleas* is, without fee or reward, to inrol the name of every perſon who ſhall be admitted an attorney of this court, purſuant to this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided for that purpoſe, to which all perſons ſhall have recourſe without fee or reward. *Stat.* 2 *Geo.* 2.

No attorney to have more than two clerks at one time.

No attorney ſhall have more than two clerks at one and the ſame time, who ſhall be bound by contract in writing. *Same ſtat.*

Prothonotaries may have three clerks.

The prothonotaries of this court may have three clerks, and at one and the ſame time, and no more; and ſuch clerks having ſerved five years may be admitted, *&c.* in the ſame manner as any perſon may, who ſhall have ſerved a clerkſhip to a ſworn attorney for five years. *Same ſtat.*

Attorney, with conſent of attorney of another court, may practice in ſuch court.

Any perſon ſworn, admitted, and inrolled an attorney of this court, with conſent in writing, and in the name of any attorney of any other court of record at *Weſtminſter*, *&c.* may ſue out any writ, or commence or defend any action in ſuch court, notwithſtanding ſuch perſon be not ſworn or admitted an attorney in ſuch court. *Same ſtat.*

Attorney permitting thoſe that are not, to act in his name, diſabled to practice.

If any ſworn attorney of this court ſhall knowingly and willingly permit or ſuffer any other perſon to ſue out any writ, or commence or defend any action, in his name, not being a ſworn attorney or a ſworn ſoli-

citor in *Chancery*, &c. and ſhall be thereof convicted, he ſhall, from the time of ſuch conviction, be diſabled to practice, and his admittance be void. *Same ſtat.*

Attorney may be admitted a ſolicitor.

A ſworn attorney of this court may be ſworn, admitted and inrolled a ſolicitor in all or any of the courts of equity without any fee for the oath, or any ſtamp, if the maſter of the rolls, *&c.* ſhall, on examining, be ſatisfied that ſuch attorney is duly qualified to be ſo admitted. *Same ſtat.*

No attorney to commence any action for fees, &c. until a month after a bill delivered and ſigned.

No attorney of this court ſhall commence any action for recovery of any fees, charges, or diſburſements, until one month after he ſhall have delivered to the party to be charged therewith, or left for him at his dwelling-houſe, or laſt place of abode, a bill of ſuch fees, charges and diſburſements, in a common legible hand, and in the *Engliſh* tongue, (except law terms, and the names of writs) and in words at length (except times and ſums) ſubſcribed with the proper hand of ſuch attorney [ſince by *ſtat.* 12 *Geo.* 2. a bill may be wrote with ſuch abbreviations as are commonly uſed in the *Engliſh* language;] and upon application of the party chargeable by ſuch bill, or any other in that behalf authoriſed, unto any judge of the court, *&c.* where the buſineſs, or the greateſt part thereof, in amount or value was tranſacted; and upon ſubmiſſion of the party, or other perſon authoriſed as aforeſaid, to pay the whole, that upon taxation ſhall appear due to ſuch attorney, the judge, *&c.* is required and impowered to refer the bill, and the

And on application of the party chargeable by ſuch bill.

And ſubmiſſion to pay what ſhall appear due on taxation.

The bill to be referred to be taxed.

whole of ſuch attorney's demands thereupon (although no action be depending touching the ſame) to be taxed, without any money being brought into court. And if the attorney, having due notice, ſhall refuſe to attend ſuch taxation, the officer may proceed *ex parte* (pending which reference no action ſhall be brought); and upon ſuch taxation the party ſhall forthwith pay to the attorney the whole that ſhall be found due, and in default be liable to an attachment or proceſs of contempt, or other proceeding at the election of the attorney. And if upon ſuch taxation it ſhall be found, that ſuch attorney has been overpaid, then the attorney ſhall forthwith pay to the party all ſuch money as the officer ſhall certify to have been ſo overpaid; and in default ſhall in like manner be liable to an attachment, or proceſs of contempt, or other proceeding, at the election of the party. And the court is to award coſts of taxation according to the event thereof, (*viz.*) if the bill taxed be leſs by a ſixth part, than the bill delivered, the attorney is to pay the coſts; if not leſs by a ſixth part, the court at diſcretion ſhall charge the attorney or client according to the reaſonableneſs or unreaſonableneſs of the bill. *Same ſtat.*

Without bringing money into court.

No action to be brought pending the reference.

On taxation the party to pay what ſhall be found due.

And if attorney found to be over paid;

Then to refund.

If bill taxed be leſs by a ſixth than bill delivered, the attorney to pay the coſts of taxation, aliter *at the diſcretion of the court.*

Nothing in the ſaid act contained ſhall extend to any bill of fees, charges and diſburſements, due from one attorney or ſolicitor to any other attorney or ſolicitor, or clerk in court, but every ſuch attorney, ſolicitor or clerk in court, may uſe ſuch remedy for recovery of his fees, charges and diſ-

Not to extend to any bill of fees between one attorney and another.

burſements, againſt ſuch other attorney or ſolicitor, as he might have done before the making the ſaid act. *Stat.* 12 *Geo.* 2.

Nor to conveyancing buſineſs.

An attorney's bill for conveyancing buſineſs only, is not liable to be taxed otherwiſe than by a jury upon a *quantum meruit*.

After an attorney's death his bill not to be taxed.

After an attorney is dead his bill is not liable to be taxed. *Vide* 2 *Strange* 1056. *Andrews* 276.

Of application to tax an attorney's bill.

The court will not order that an attorney ſhall deliver his bill, and that the ſame ſhall be taxed, on one and the ſame motion, they being diſtinct matters, and the latter part may prove fruitleſs; the bill may be reaſonable, and no occaſion to tax it; the motion muſt be for the attorney to deliver his bill, and then, if there be occaſion, the client may move to have it taxed; but the more uſual way is to ſummons the attorney before a judge; and if the judge's order be diſobeyed, to move the court that the order may be made a rule of court, and then proceed to an attachment in caſe of further contempt.

Any perſon practiſing as an torney not being admitted forfeits 50 l.

Any perſon in his own name, or in the name of any other, ſuing out any writ, or commencing or defending any action, in any of the courts of law or equity, mentioned in the ſaid act as attorney or ſolicitor, in expectation of any gain, fee or reward, without being admitted, ſhall forfeit 50 *l.* to the uſe of the perſon who ſhall proſecute, and be made incapable to maintain any action for any fee, reward or diſburſement, on account

of

of profecuting or defending any ſuch action. *Stat.* 2 *Geo.* 2.

No attorney being a priſoner to commence or proſecute any action.

No attorney who ſhall be a priſoner in any gaol or priſon, or within the limits, rules or liberties of any gaol or priſon, ſhall, during his confinement, in his own name, or the name of any other, ſue out any writ or proceſs, or commence or proſecute any action or ſuit, and all proceedings in ſuch action or ſuit ſhall be void and of no effect; and ſuch attorney ſo commencing or proſecuting any action or ſuit as aforeſaid, ſhall be ſtruck off the roll, and be incapacitated from acting as an attorney for the future; and any attorney permitting and impowering any ſuch attorney as aforeſaid, to commence or proſecute any action or ſuit in his name, ſhall be ſtruck off the roll, and be incapacitated from acting as an attorney for the future. *Stat.* 12 *Geo.* 2. *c.* 13. §. 9. 10.

Such attorney to be ſtruck off the roll.

As alſo any other attorney permitting ſuch attorney to uſe his name.

Not to extend to ſuits commenced before the confinement of ſuch attorney.

This not to extend to prevent any attorney ſo confined as aforeſaid, from carrying on or tranſacting any ſuit or ſuits commenced before the confinement of ſuch attorney. *Same ſtat.*

Suing on a bail bond given in an action commenced before the impriſonment, is but a continuance of the original ſuit.

After an action commenced by an attorney he becomes a priſoner, then the bail bond is aſſigned, and he, being ſtill a priſoner, commences an action on the bail bond, this has been held to be a continuance of the original ſuit commenced before the attorney became a priſoner.

Attornies priſoners may defend, tho' not proſecute ſuits.

It has alſo been held, that the above act, diſqualifying attornies who are priſoners from practiſing,

practiſing, relates only to the proſecuting, and not to the defending ſuits.

Every perſon bound clerk to cauſe an affidavit to be made of the execution of the articles, ſpecifying the names and places of abode of the parties, date, &c.

Every perſon, who after 1 *July* 1749. ſhall be bound by contract in writing to ſerve as a clerk to any attorney of this court, as by *Stat.* 2 *Geo.* 2. is directed, ſhall within three months after the date of ſuch contract, cauſe an affidavit to be made of the actual execution of ſuch contract by ſuch attorney, and the perſon ſo bound, ſpecifying the name of ſuch attorney, and of the perſon ſo bound, and their places of abode reſpectively, together with the day of the date of ſuch contract; and ſuch affidavit ſhall be filed within the time aforeſaid in this court, with the officer after mentioned, or his deputy, who ſhall make and ſign a memorandum or mark of the day of filing ſuch affidavit, at the back or bottom thereof. *Stat.* 22 *Geo.* 2. *c.* 46. §. 3.

Affidavit to be filed, and the day of filing marked thereon.

No perſon to be admitted an attorney, till affidavit read in court.

No perſon bound after ſaid 1 *July*, ſhall be admitted an attorney before ſuch affidavit ſo marked ſhall be produced, and openly read in court. *Same ſtat.* §. 4.

Clerk of the warrants to file ſuch affidavits, and enter ſubſtance thereof in a book.

In this court the clerk of the warrants, or his deputy, ſhall be the proper officer for filing ſuch affidavits. *Same ſtat.* §. 5. And ſhall keep a book, wherein ſhall be entered the ſubſtance of ſuch affidavit, ſpecifying the names and places of abode of every ſuch attorney and clerk, and of the perſon making ſuch affidavit, with the date of the contract, and the days of making and filing ſuch affidavit, and may take, at the time of filing ſuch affidavit, 2 *s.* 6 *d.* for his aforeſaid trouble,

Fee 2 *s.* 6 *d.*

trouble, which book may be ſearched *gratis*. *Same ſtat.* §. 6.

Book to be ſearched gratis

No attorney ſhall have, take, or retain any clerk, who ſhall become bound by contract in writing as aforeſaid, after ſuch attorney ſhall have diſcontinued or left off, or during ſuch time as he ſhall not actually practiſe as, or carry on the buſineſs of an attorney. *Same ſtat.* §. 7.

No attorney to take ſuch clerk after he has diſcontinued buſineſs.

Every perſon bound by contract in writing to ſerve any attorney as by the ſaid act is directed, ſhall during the whole time and term of ſervice ſpecified in ſuch contract continue, and be actually employed by ſuch attorney, or his agent, in the proper buſineſs, practice or employment of an attorney. *Same ſtat.* §. 8.

Every perſon ſo bound to be during the whole time actually employed by ſuch attorney.

Provided if any ſuch attorney, to or with whom any ſuch perſon ſhall be ſo bound ſhall happen to die before the expiration of ſuch term, or diſcontinue or leave off his practice, or if ſuch contract ſhall by mutual conſent of the parties be cancelled, or ſuch clerk ſhall be legally diſcharged by rule of the court before the expiration of ſuch term, and the ſaid clerk ſhall in any of the ſaid caſes be bound by another contract or contracts in writing to ſerve, and ſhall accordingly ſerve in manner beforementioned, as clerk to any other ſuch practiſing attorney or attornies as aforeſaid, during the reſidue of the ſaid term of five years, then ſuch ſervice ſhall be deemed and taken to be as good, effectual and available, as if ſuch clerk had continued to ſerve as a clerk for the ſaid term, to the ſame

If before the expiration of the time the attorney die, &c. or the clerk be diſcharged by, &c.

and be bound to ſerve for the remainder of the time,

ſuch ſervice to be good.

same person to whom he was originally bound, so as affidavit be duly made and filed of the execution of such second contract or contracts, within the time and in like manner, as is before directed concerning such original contract. *Same stat.* §. 9.

So as affidavit be made, &c. of the execution of the articles.

Every person who shall become bound as a clerk as aforesaid, shall, before he be admitted an attorney, cause an affidavit of himself, or such attorney to whom he was bound as aforesaid to be duly made, and filed with the officer before appointed, that he hath actually and really served and been employed by such practising attorney, to whom he was bound as aforesaid, or his agent during the said whole term of five years. *Same stat.* §. 10.

Before admittance of an attorney, affidavit to be made and filed of actual service.

If any sworn attorney shall act as agent for any person or persons not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be any ways made use of upon the account, or for the profit of any unqualified person or persons, or send any process to such unqualified person or persons, thereby to enable him or them to appear, act or practice in any respect as an attorney or solicitor, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the court, from whence any such process did issue, and proof made thereof upon oath to the satisfaction of the court, that such sworn attorney had offended therein as aforesaid, then every such attorney so offending shall be struck off the roll, and from

Attorney acting as agent or permitting his name to be used for or sending any process to any unqualified person, thereby to enable him to appear or act as an attorney, to be struck off the roll.

from ever after diſabled from practiſing as an attorney or ſolicitor, and in that caſe, and upon ſuch complaint and proof made as aforeſaid, it ſhall be lawful for the ſaid court to commit ſuch unqualified perſon, ſo acting or practiſing as aforeſaid, to the priſon of the ſaid court, for any time not exceeding one year. *Same ſtat.* §. 11.

And the unqualified perſon to be committed.

No perſon ſhall act as a ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter ſeſſions of the peace, either with reſpect to matters of a criminal or of a civil nature, unleſs ſuch perſon ſhall have been heretofore admitted an attorney of one of the courts of record at *Weſtminſter*, and duly inrolled purſuant to *Stat.* 2 *Geo.* 2. *c.* 23. or be hereafter admitted an attorney and inrolled as aforeſaid, purſuant to this act, or ſuch other law as ſhall be then in being, and unleſs ſuch perſon ſhall continue ſo entered on the roll at the time of ſuch his acting in the capacity aforeſaid; but every perſon, who ſhall ſo act, not being admitted and inrolled as aforeſaid, ſhall be ſubject to a penalty of 50*l.* to be recovered by action of debt, bill, *&c.* by any perſon, who ſhall ſue for the ſame, within 12 months after the offence committed, with treble coſts of ſuit. And if any attorney ſhall permit any perſon, not being admitted and inrolled as aforeſaid, to make uſe of his name in the courts of general or quarter ſeſſions as aforeſaid, ſuch attornies ſhall be ſubject to the like penalty of 50*l.* to be recovered in manner aforeſaid. *Same ſtat.* §. 12.

None but attornies to practice at general or quarter ſeſſions.

under penalty of 50*l.*

No attorney to permit an unqualified perſon to uſe his name at the ſeſſions under the like penalty.

Provided

Provided that nothing herein contained ſhall extend to deprive the attornies of the duchy of *Lancaſter*, or of the courts of great ſeſſions in *Wales*, or of the counties palatine of *Cheſter*, *Lancaſter* and *Durham*, from acting within their reſpective juriſdictions. *Same ſtat.* §. 13.

By ſtatutes 27 *Geo.* 2. *c.* 16. and 28 *Geo.* 2. *c.* 19. further time is given for the filing affidavits of the execution of contracts of clerks to attornies.

Attorney not attending, &c. to have no privilege.

An attorney that has not been attending his imployment in this court by the ſpace of one year, unleſs hindered by ſickneſs, ſhall not be allowed his privilege of an attorney. *Mich.* 1654.

Not to be leſſee in ejectment nor bail.

No attorney to be leſſee in an ejectment, nor bail for a defendant in this court. *Mich.* 164. *M.* 6 *Geo.* 2.

No changing attorney without rule or order.

No perſon without rule of court, or order of a judge or prothonotary, and notice to the adverſe party or his attorney, ſhall change or ſhift his attorney; and ſuch attorney newly coming in to take notice at his peril of the rules whereunto the former attorney was liable, had he continued. *Mich.* 1654.

And his bill paid.

The court will not permit an attorney to be changed in a cauſe, and another attorney appointed in his ſtead, till his bill of fees and diſburſements be ſettled and paid.

Attornies not to ſhift from one prothonotary's office to another.

No attorney, without leave of the court, ſhall ſhift from the prothonotary's office where firſt ſworn and ſettled; and no prothonotary ſhall ſuffer ſuch attorney to enter any

any of his cauſes in his office contrary to this rule. *Trin.* 21 *Car.* 2.

The clerk of the warrants to certify to the ſeal office the names of ſuch attornies that have diſcontinued, and are forejudged the court, and put out of the roll, and have not filed any warrants of attorney, nor continued their names upon the roll for above four terms paſt; and thereupon no ſuch perſon ſhall have a writ of privilege or attachment ſealed until they have the ſaid writ ſigned by the clerk of the warrants, to teſtify that their names are on the roll, for which no fee is to be paid. *Trin.* 29 *Car.* 2.

Attornies who have diſcontinued, forejudged, or put out of the roll, not to have writ of privilege or attachment.

And now the ſealer does not put the ſeal to any writ of privilege or attachment before it is ſigned by the clerk of the warrants.

Writ of privilege to be ſigned by the clerk of the warrants.

An attorney has the privilege of ſuing by attachment of privilege, and of being ſued by bill in manner herein after mentioned. To this privilege there are ſome exceptions, as 1. At the king's ſuit, (but in a *qui tam* he has his privilege.) 2. In a real action. 3. Where he ſues, or is ſued, *in auter droit* as heir, executor or adminiſtrator. 4. Where he joins, or is joined with another. 5. Where there is not the ſame remedy in this court, as in the caſe of a foreign attachment in *London*. 6. When he is ſued by an attorney of another court, *viz.* an attorney of this court ſued by an attorney *B. R. et vice verſa*, for the general rule is, that privilege takes away privilege; but then it ought to be for a debt really due, and not on a note colorably indorſed without conſideration, in order

Privilege of an attorney as to ſuing and being ſued.

order to deprive the defendant of his privilege; for this is an abuſe of privilege in the plaintiff, who thereby becomes unworthy of any privilege. If an attorney of one court hath cauſe of action againſt another attorney of the ſame court, he ought to ſue by bill, and not by attachment of privilege; for it ſeems needleſs to ſend a writ to the ſheriff to bring in a defendant, who is preſumed to be ſtanding at the plaintiff's elbow in his own court.

Attorney not bound to ſerve in the militia,

On hearing council for Mr. *Heaton*, an attorney *C. B.* and for the deputy lieutenancy, the court granted a writ of privilege to excuſe Mr. *Heaton* from ſerving in the militia of the city of *London*, the ſervice being perſonal. *Mich.* 14 *Geo.* 2. *vide* 2 *Strange* 1143.

nor conſtable, &c.

Privilege from ſerving the office of conſtable, though there be a cuſtom for perſons to be choſen into that office in reſpect of their eſtates, or otherwiſe, for no cuſtom ſhall be intended to be more antient than that of this court. *Cro. Car.* 283, 389. *Noy* 112. *March* 30. 1 *Mod.* 13. 1 *Vent.* 16, 29. 2 *Keb.* 477, 508. 1 *Lev.* 265. *T. Raym.* 179. For privilege in other reſpects, ſee *Townſend's Tables* 452, 453. *Cornwall's Tables* 432, 433.

Attornies to be admitted of ſome of the inns of court.

All attornies of this court ſhould be admitted of ſome inn of court, or *Chancery*, and take chambers there, (if they conveniently may be had) elſe lodgings in ſome convenient place near the ſaid inns, and leave notice in writing with the butler or porter of ſuch inn where their lodgings are, except

Except.

ſuch

ſuch attornies, who are inhabitants or houſe-keepers in *London*, *Weſtminſter*, *Southwark*, or the ſuburbs thereof, and liberty of the *Tower* of *London*, and *St. Katherine's*; or are attornies of any courts within the ſaid cities, town and liberty. *Mich.* 1654. *Trin.* 29 *Car.* 2. *Mich.* 4 *Annæ.*

Each attorney pays 8 d. *a term to the clerk of the warrants.*

Every attorney of the court pays to the clerk of the warrants 8*d.* a term, *viz.* 4*d.* a term for the puiſne judges (to be diſtributed in charity) and 4*d.* a term for the cryers of the court. And when any attorney brings a writ of privilege or attachment to be ſigned, or warrant of attorney to be filed, he muſt pay the arrears (if any) of his termage.

Attorney reſtored, who had been ſtruck out of the roll at his own requeſt.

Mr. *Moody*, an attorney of *Hampſhire*, having at his own requeſt been ſtruck out of the rolls of attornies, was, upon his own motion in the treaſury chamber, and producing an affidavit of his reaſons, reſtored to the office and privilege of an attorney, he conſenting not to take advantage of his privilege againſt any action then depending againſt him, if there was any. *Trin.* 16 *Geo.* 2.

Attorney anſwerable for his agent.

A country attorney is anſwerable to his client for his agent.

Matters not to be tranſacted in the country.

Where country attornies are concerned, declarations, pleas, and other proceedings, ſhould not be delivered and carried on in the country, but by the agents in town.

Declaration.

If a rule be given to declare, and the plaintiff's attorney in the country agrees that a demand of the declaration may be made on him in the country, which is accordingly

done, and a *Non-pros* ſigned for want of a declaration, the *Non-pros* is irregular, and may be ſet aſide; for by the practice of the court, the declaration ſhould have been demanded of the agent in town.

Plea. If the agent of the plaintiff's attorney gives the agent for the defendant time to plead, the country attorney cannot ſign judgment till that time be expired.

Plea. A plea delivered in the country is irregular, and judgment may be ſigned.

Iſſue. If the country attornies agree that the iſſue ſhall be delivered in the country, and it is notwithſtanding tendered in town, and not paid for by the agent, judgment may be ſigned, for the agreement is void.

Iſſue. But where the defendant pleads by his attorney in the country, and the plaintiff's attorney accepts it there, he may tender the iſſue in the country, and if not paid for there, may ſign judgment.

Notice of trial. Countermand. Notice of trial muſt be given in town, but a countermand may be given in the country.

Sheriffs.

AS they are bound to execute the proceſs of the court, and puniſhable by the court for miſbehaviour in executing the ſame, they are generally eſteemed and looked upon as officers of the court.

Every ſheriff to make a deputy on record in court. Every ſheriff ſhall make yearly a deputy on record, in the *Chancery*, *King's Bench*, *Common Pleas*, and *Exchequer*, before they ſhall

ſhall return any writs, to receive all manner of writs and warrants delivered to them. *Stat.* 23 *H.* 6. *c.* 10.

Every ſheriff is to make and enter on record a deputy to receive all manner of writs and proceſs. *Mich.* 1654. *Hil.* 14, 15, and *Hil.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2.

Deputy to have his name and place of abode in London *or* Weſtminſter *ſet up in the office of the clerk of the warrants.*

Each deputy yearly to have his name and place of reſidence in *London* or *Weſtminſter*, ſet up in the office of the clerk of the warrants. *Mich.* 1654.

To give his attendance in Weſtminſter Hall *in Term-time.*

Sheriffs deputies are to give their attendance in *Weſtminſter-Hall* daily in term-time, that they may with more conveniency diſpatch the duty belonging to their reſpective offices. *Mich.* 1654. *Hil.* 14 & 15. and *Hil.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2.

Sheriffs not to deliver out warrants before writs deliver'd to them, or blank warrants. Stat. 43 Eliz. c. 6. 6 Geo. 1. c. 21.

Sheriffs are not to deliver out any warrants before the writs be ſued forth and delivered to them. Nor deliver out any blank warrants. *Mich.* 1654. *Hil.* 14 & 15 *Car.* 2. *Trin.* 1 *Jac.* 2.

No under-ſheriff to practice as an attorney.

No under-ſheriff to practice as an attorney during ſuch his imployment. *Stat.* 1 *H.* 5. 4. *Mich.* 1654.

Sheriff's fees on executions.

The ſheriff, for ſerving any execution upon the body, lands, goods or chattels, ſhall have 12 *d.* in the pound where the ſum exceeds not 100 *l.* and if it does exceed, then 6 *d.* for every pound exceeding 100 *l.* that he

ſhall levy or take the body in execution for. *Stat.* 29 *Eliz. c.* 4.

On writ of Poſſeſſion.

On executing a writ of *Habere facias poſſeſſionem*, the ſheriff ſhall not take above 1*s.* in the pound, where the rent exceeds not 100*l. per annum*; and 6*d.* in the pound for every pound over and above. *Stat.* 3 *Geo.* 1. *c.* 15. §. 16.

On Capias ad ſatisfaciendum.

On executing a *Capias ad ſatisfaciendum*, the ſheriff to take poundage only for the real debt, on penalty of treble damages, and 200*l.* The real debt to be mark'd on the back of the writ. *Same ſtat.* §. 17.

Sheriffs to indorſe attorney's name on warrants.

Every ſheriff, or other officer who ſhall make out any warrant upon any writ, proceſs or execution, and ſhall not ſubſcribe or indorſe the name of the attorney who ſued out the ſame, ſhall forfeit the ſum of five pounds, to be aſſeſſed as a fine upon ſuch ſheriff or other officer, by the court, one moiety to the king, the other moiety to the party aggrieved by ſuch omiſſion. *Stat.* 12 *Geo.* 2. *c.* 13. *Stat.* 2 *Geo.* 2. *c.* 23. §. 22.

Sheriff not returning proceſs within 6 *days after ſervice of rule, to pay coſts.*

If any ſheriff, under-ſheriff, or their deputy, bailiff, coroner, bailiff of any liberty, or other officer having the return of proceſs, ſhall not return the ſame within ſix days after ſervice of a rule of this court for that purpoſe, he ſhall be liable to pay the coſts occaſioned by ſuch neglect. *Hill.* 8 *Geo.* 1.

Service on the under-ſheriff ſufficient.

Service of the rule on the under-ſheriff, or on one who really acts as under-ſheriff, though he be not under-ſheriff, is ſufficient to ground attachment againſt the ſheriff.

When a new ſheriff is choſen, yet the old ſheriff continues ſheriff of the county till the new ſheriff is ſworn, and he receives a writ of *Superſedeas.*

Old ſheriff to continue till new one ſworn.

On the deceaſe of any ſheriff the under-ſheriff is to act in his name till another be appointed. *Stat.* 3 *Geo.* 1. *c.* 15. §. 8.

On the death of a ſheriff the under-ſheriff to act till a new one appointed.

The ſheriff of every ſhire, being no city or town made a ſhire, within which there is any franchiſe or liberty, the lord whereof is intitled to the return of writs, ſhall (if required by ſuch lord) within one month after ſuch requeſt, nominate and appoint one or more deputy or deputies, at the coſts of ſuch lord, to be reſident at ſome town or place in or near ſuch franchiſe or liberty, to be appointed by the lord chancellor and chief juſtice of *B. R.* and *C. B.* or one of them hereby authoriſed to appoint ſuch town or place, and to ſettle what coſts ſhall be paid therefore by ſuch lord; and ſuch deputy or deputies ſhall reſide at ſuch town or place ſo to be appointed, and have authority in the ſheriff's name to receive and open all ſuch writs and proceſs (the execution or return whereof doth belong to the lord of ſuch franchiſe or liberty) and in the name and under the ſeal of the ſheriff, to iſſue out ſuch warrant or warrants to ſuch lord as by law is requiſite for the due execution of ſuch writ or proceſs; and ſuch deputy or deputies is and are required, on tender of ſuch writ or proceſs, to receive and open the ſame, and iſſue ſuch warrants thereon without delay, in

Sheriff on requeſt and coſt of a lord of a franchiſe or liberty, to appoint a deputy to reſide at ſome place in or near the franchiſe.

Place and coſts to be appointed and ſettled by lord chancellor, &c.

Deputy to receive writs, and in name and under ſeal of ſheriff to iſſue warrants to the lord of the franchiſe.

ſuch manner and form as the ſheriff may or ought to do, without taking any further fee than now due and accuſtomed for ſuch warrant, on pain that every ſuch ſheriff or deputy guilty of any wilful neglect or default ſhall be puniſhed as for a contempt of court, and make ſatisfaction to the party damaged. *Stat.* 13 *Geo.* 2. *c.* 18.

Taking no more than the accuſtomed fees.

Puniſhment of ſheriff or deputy making wilful neglect.

All ſheriffs of any county, city, liberty, diviſion, town corporate, or place, ſhall at the expiration of their office, turn over to the ſucceeding ſheriff, by indenture and ſchedule, all ſuch writs and proceſs as ſhall remain in their hands unexecuted, who ſhall duly execute and return the ſame; and in caſe any ſuch ſheriff ſhall refuſe or neglect to turn over ſuch proceſs, in manner aforeſaid, every ſuch ſheriff ſo neglecting or refuſing, ſhall be liable to make ſuch ſatisfaction, by damages and coſts, to the party aggrieved, as he, ſhe, or they, ſhall ſuſtain by ſuch neglect or refuſal. *Stat.* 20 *Geo.* 2. *c.* 37.

Sheriff by indenture and ſchedule to turn over all writs, &c. to his ſucceſſor.

Or make ſatisfaction to party injured.

No ſheriff ſhall be liable to be called upon to make a return of any writ or proceſs, unleſs he be required ſo to do within ſix months after the expiration of his ſaid office. *Same ſtat.*

Sheriff not liable to return any writ unleſs required within 6 months after expiration of his office.

Of the four terms.

The four terms.

THERE are four terms in the year, during which this court ſits, *viz. Michaelmas* term, *Hilary* term, *Eaſter* term and *Trinity*

Trinity term; the two firſt are called fix'd terms, as conſtantly falling on certain fix'd days in the year; the two latter terms are called moveable terms, *Eaſter* term being governed by *Eaſter* day, and *Trinity* term being governed by *Corpus Chriſti* day, both which are moveable feaſts. *Hilary* and *Trinity* terms are called iſſuable terms, for that in them iſſues are made up for trials at the aſſizes which reſpectively follow thoſe terms.

Fix'd and moveable terms.

Iſſuable terms.

Michaelmas term begins on the ſixth of *November*, if not *Sunday*; if *Sunday*, on the ſeventh (its eſſoin-day being the third day of *November*: The morrow of *All-Souls*) and ends on the twenty-eighth day of *November*, if it be not a *Sunday*, but if a *Sunday*, then on the morrow following. This term, before the ſtatute 16 *Car.* 1. *c.* 6. began on the ninth day of *October*, and had eight returns, which by that ſtatute are reduced to ſix, and before the *Stat.* 24 *Geo.* 2. *c.* 48. began on the twenty-third day of *October* and had ſix returns, which by that ſtatute are reduced to four.

Michaelmas *term.*

Hilary term begins on the twenty-third day of *January* (except it be on a *Sunday*, and then on the morrow after) being always that day eight weeks on which *Michaelmas* term ended, its eſſoin-day being the twentieth of *January*, and it ends on the twelfth day of *February* (if not *Sunday*, and then on the morrow after) being always the ſame day of the week on which *Michaelmas* term began.

Hilary *term.*

Eaſter *term.* *Eaſter* term begins on the *Wedneſday* fortnight after *Eaſter*-day, its eſſoin-day being the *Sunday* next preceding, but held on the *Monday*, and ends on the *Monday* next after Aſcenſion day.

Trinity *term.* *Trinity* term begins on the *Friday* next after *Trinity Sunday*; and though that day ſhould happen to be the feaſt of St. *John* the *Baptiſt*, the term muſt then begin, for by the *Stat.* 32 *H.* 8. *c.* 21. the full term ſhall begin on the *Friday* next after *Corpus Chriſti* day; the eſſoin-day is the *Monday* preceding. It ends on the *Wedneſday* fortnight after it began, except it happen on the twenty-fourth of *June*, being the feaſt of St. *John* the *Baptiſt*, and then it muſt be adjourned on the *Tueſday* to the *Thurſday* following. This term was limited and ſettled as it now is, by the ſaid *Stat.* 32 *H.* 8. it having before more returns, and a different commencement.

Eſſoin-day. The eſſoin-day (from *eſſoine*, or *exonnie*, an *excuſe*, where the defendant cannot conveniently appear) is ſaid to be the firſt day of the term, and on that day one of the judges goes down to *Weſtminſter* for the keeping eſſoins, profers, returns, *&c.* But full term begins always the fourth day after incluſive, except in *Trinity* term, when it begins on the fifth, by reaſon of *Corpus Chriſti* day, which is *dies non juridicus.*

The eſſoin-day is the firſt day of term, but in common parlance the firſt day the court ſits is the firſt day of the term; ſo

where

where promiſe was made, the day after the eſſoin-day of *Trinity* term, to deliver an indenture before the end of the *Trinity* term next, adjudged he muſt do it the ſame term, not that time twelve months. *Biſhop* and *Hanecourt*, 3 *Cro.* 310. 1 *Cro.* 102.

Writ of adjournment.

On a writ of adjournment nothing can be done at the day but to read the writ and adjourn all appearances and proceedings till the day appointed, and no appearance can be made or other matters done then, and becauſe an imparlance was entered as on that day, it was held error. 2 *Cro.* 445.

Judgment.

A judgment relates to the eſſoin-day, which is the firſt day in law, and not to the *Quarto die poſt*, which is but a day of grace; *ideo* a judgment of *Hilary* term had precedence to a ſtatute acknowledged, 22 *Jan. Stamford* and *Cooper*, 1 *Cro.* 102. *Cro. Car.* 73. *Vide Dyer* 200 and 361. 34 *H.* 6. *fo.* 20. 22 *H.* 7. *fo.* 7.

Michaelmas

Michaelmas term, which contains three weeks and two days, hath four returns.

By ORIGINAL.	*By ATTACHMENT, BILL, &c.*
1. On the morrow of *All Souls.*	On ( ) next after the morrow of *All Souls.*
2. On the morrow of Saint *Martin.*	On ( ) next after the morrow of St. *Martin.*
3. In eight days of Saint *Martin.*	On ( ) next after eight days of St. *Martin.*
4. In fifteen days of Saint *Martin.*	On ( ) next after fifteen days of St. *Martin.*

Hilary term, which contains three weeks complete, hath four returns.

By ORIGINAL.	*By* ATTACHMENT, BILL, &c.
1. In eight days of Saint *Hilary*.	On ( ) next after eight days of St. *Hilary*.
2. In fifteen days of Saint *Hilary*.	On ( ) next after fifteen days of St. *Hilary*.
3. On the morrow of the purification of the bleſſed *Mary*.	On ( ) next after the morrow of the purification of the bleſſed Virgin *Mary*.
4. In eight days of the purification of the bleſſed *Mary*.	On ( ) (next after eight days of the purification of the bleſſed Virgin *Mary*.

Eaſter term, which contains three weeks and ſix days, hath five returns.

By ORIGINAL.	*By ATTACHMENT, BILL, &c.*
1. In fifteen days of *Eaſter.*	On (*Wedneſday*) next after fifteen days of *Eaſter.*
2. In three weeks from the day of *Eaſter.*	On ( ) next after three weeks from the day of *Eaſter.*
3. In one month from the day of *Eaſter.*	On ( ) next after one month from the day of *Eaſter.*
4. In five weeks from the day of *Eaſter.*	On ( ) next after five weeks from the day of *Eaſter.*
5. On the morrow of the aſcenſion of our Lord.	On (*Monday*) next after the morrow of the aſcenſion of our Lord.

Trinity term, which contains twenty days, hath four returns.

By ORIGINAL.	*By ATTACHMENT, BILL,* &c.
1. On the morrow of the Holy *Trinity.*	On (*Friday*) next after the morrow of the Holy *Trinity.*
2. In eight days of the Holy *Trinity.*	On ( ) next after eight days of the Holy *Trinity.*
3. In fifteen days of the Holy *Trinity.*	On ( ) next after fifteen days of the Holy *Trinity.*
4. In three weeks from the day of the Holy *Trinity.*	On (*Wedneſday*) next after three weeks from the day of the Holy *Trinity.*

All

Eſſoin-days in Eaſter *and* Trinity *terms are* Sundays, *except.*

All the eſſoin-days in *Eaſter* term except the laſt, which is *Craſtinum aſcenſionis Domini*; and all the eſſoin-days in *Trinity* term except the firſt, which is *Craſtinum Sanctæ Trinitatis*, fall on *Sundays*.

Writs grounded on originals returnable on general returns.

Attachments, &c. *on days certain.*

All writs iſſuing out of this court, grounded upon original writs out of *Chancery*, muſt be made returnable on general return days, as on the morrow of the Holy *Trinity*; but writs of attachment, and writs ſubſequent thereto, and writs grounded on bills filed againſt attornies, and ſuch officers of the court as are intitled to the privilege of the court, or members of the houſe of commons, writs of *Habeas corpus*, &c. muſt be made returnable on a day certain in full term, as on *Friday* next after the morrow of the Holy *Trinity*. But care muſt be taken that they be not made returnable on any of the following days, which are *Dies non juridici*, viz. the feaſt of the *Purification* in *Hilary* term, *Aſcenſion day* in *Eaſter*, and the feaſt of St. *John* the *Baptiſt*, if it happen in *Trinity* term (unleſs it be the firſt day of that term.)

Dies non juridici.

Fifteen days between Teſte *and return of original writs and writs ſubſequent.*

There muſt be at leaſt fifteen days between the *Teſte* and return of all original writs returnable in this court, and between the *Teſte* and return of all ordinary writs ſued and procured upon the ſame, except where altered by the following acts of parliament.

And attachments of privilege.

An attachment of privilege at the ſuit of an attorney muſt alſo have fifteen days between the *Teſte* and return.

In all actions of debt, and other perſonal actions, actions of *Ejectione firmæ* for lands or tenements, after iſſue joined to be tried by a jury, and after any judgment had or obtained, there ſhall not need to be fifteen days between the *Teſte* and return of any writ of *Venire facias*, *Habeas corpora juratorum*, or *Diſtringas juratores*, writ of *Fieri facias*, or writ of *Capias ad ſatisfaciendum*, and the want thereof ſhall not be aſſigned for error; but not to extend to any writ of *Capias ad ſatisfaciendum*, whereon an exigent after judgment is to be awarded, or to a *Capias ad ſatisfaciendum* againſt the defendant to make the bail liable. 2 *Stat.* 13 *Car.* 2. *c.* 2. *ſect.* 6, 7.

Where writs of Ven. fac. Hab. cor. jur. Diſtring. jur. Fi. fac. *and* Ca. ſa. *need not have* 15 *days between* Teſte *and return.*

Except a Ca. ſa. *to ground an exigent, or make bail liable.*

Of commencing an action.

ALL actions in this court are either founded on originals out of *Chancery*; *Actions by original.*

On attachments of privilege at the ſuit of attornies, or other officers intitled to the privilege of the court; *Attachment of privilege.*

On bills filed againſt ſuch attornies or officers, or againſt members of parliament; *Bill.*

On writs of *Habeas corpus cum cauſa*, *Certiorari*, &c. removing cauſes out of inferior courts of record; Habeas corpus, *&c.*

On writs of *Recordari facias loquelam*, *Accedas ad curiam*, or writs of falſe judgment, removing cauſes out of inferior courts not of record. Re. fa. lo. *&c.*

In

Of bail.

In commencing actions in this court, It is to be conſidered, What cauſes of action require bail, and what perſons are liable to be held to bail.

No bail of an heir, nor of an executor or adminiſtrator, unleſs on a Devaſtavit *returned.*

Bail is not required of an heir, nor of an executor or adminiſtrator, unleſs on a *Devaſtavit* grounded, as I apprehend, on a return by the ſheriff to a *Fieri facias de bonis teſtatoris*, or a *Scire fieri* inquiry, and not on the bare ſuggeſtion of the plaintiff.

Nor on a penal ſtatute.

In debt on a penal ſtatute the defendant is not to be held to ſpecial bail.

Nor on a bail-bond or recognizance of bail.

Neither is bail required in debt on a bail-bond, or recognizance of bail, for that would tend to bail *ad infinitum.*

In battery, conſpiracy, or falſe impriſonment, no bail of courſe.

In battery, conſpiracy, or falſe impriſonment, no bail of courſe without ſpecial motion and order. *Mich.* 1654.

No bail for a malicious proſecution where the plaintiff was acquitted upon a defect in the indictment.

In an action for a malicious proſecution a judge will not grant an order to hold the defendant to bail, if the plaintiff was acquitted upon a defect in the indictment, and not upon the merits. 2 *Keb.* 796.

Bail by order for criminal converſation.

In an action for a criminal converſation with the plaintiff's wife, on an affidavit of the fact, a judge will grant an order to hold the defendant to bail for ſuch ſum as he ſhall think reaſonable on the circumſtances of the caſe and parties.

Bail in an action for meſne profits.

On affidavit and application in the treaſury, the judges have ordered the defendant to be held to bail in an action for meſne profits. *Pulleyne & Ux.* v. *Richardſon, Paſ.* 1 *G.* 2. *Duncombe* v. *Motteram & al. Trin.* 2 *&* 3 *G.* 2.

On

Bail in treſpaſs for entering plaintiff's hop-ground, and taking away his hop-poles.

On an affidavit made, the defendant was held to bail in an action of treſpaſs, for entering the plaintiff's hop-ground, and taking and carrying away 20,000 hop-poles, to the plaintiff's damage of 40 *l.* The court refuſed to diſcharge the defendant on a common appearance, and declared, tho' it was reaſonable to have a judge's order in battery, there was none in this caſe. *Cook & al.* v. *Sankey, Trin.* 7 & 8 *Geo.* 2.

No bail in ſlander, except ſlander of title.

In ſlander no bail, except in ſlander of title, and then to be left to the diſcretion of the judge. *Mich.* 1654.

Nor in covenant, unleſs for payment of money.

Bail is not generally required in covenant, unleſs it be for payment of money. *Same rule.*

Or damages aſcertained by affidavit.

But tho' the covenant be not for payment of money, if the plaintiff makes an affidavit of the ſum he is damnified in by the breach of the covenant, the court will not diſcharge the defendant on a common appearance.

Bail in debt on a judgment, if no bail in the original action; aliter *if bail in the original action.*

Where an action of debt is brought on a judgment, if there was bail put in to the original action the defendant ſhall not be held to bail in the action of debt on the judgment; but if there was no bail in the original action, then bail muſt be put in to the action of debt on the judgment.

The like tho' error brought on the judgment, and bail be put in on the writ of error.

If a writ of error be brought on a judgment, and bail be put in on the writ of error, and pending the writ of error, an action of debt be brought on the judgment, the defendant in ſuch action ſhall be held to bail if there was no bail in the original action;

for though it may be ſaid the bail on the writ of error is a ſecurity for the plaintiff's demand, yet it is to be obſerved that there may be accidents whereby ſuch bail will not be liable; as that the writ may abate by the death of the chief juſtice, or the like.

Priſoner diſcharged not to be held to bail in debt on the judgment.

A priſoner diſcharged by *Superſedeas* for want of proſecution ſhall not be held to bail in an action of debt brought on the judgment obtained in the cauſe wherein he was diſcharged. *Hil.* 8 *Geo.* 2. *See the rule at large* tit. *Priſoners.*

Action againſt baron and feme, and wife only arreſted, ſhe ſhall be diſcharged on a common appearance. Aliter *if both arreſted.*

If an action be brought againſt *baron* and *feme*, and the wife only be arreſted, ſhe ſhall be diſcharged on a common appearance; for otherwiſe the huſband may contrive the impriſonment of the wife; but if both the huſband and wife be arreſted, ſhe ſhall not be diſcharged until bail be put in for both, for otherwiſe a woman may marry a man in gaol and defraud her creditors. *Sed qu:*

Attorney not to be held to bail unleſs for a contempt, &c.

No attorney of this court, or other officer intitled to the privilege of the court, is to be held to bail, unleſs it be on an attachment for a contempt (to which, bail muſt be taken by the court or a judge, and not by the ſheriff) or in an action at the ſuit of an attorney, or any other perſon intitled to the privilege of another court, *viz. B. R.* or *Scaccarii*; for in ſuch caſe the plaintiff's privilege takes away the defendant's. *Vide antea fo.* 47.

Seamen and ſoldiers.

By *Stat.* 1 *Geo.* 2. *c.* 14. No ſeaman to be taken out of his majeſty's ſervice, unleſs oath be made that the original cauſe of action

amounted to 20 *l.* and by the annual mutiny act, no ſoldier to be taken out of his majeſty's ſervice unleſs oath be made that the original debt amounted to 10 *l.* But ſee the acts themſelves.

No bail where the cauſe of action amounts not to 10 l.

No perſon ſhall be held to bail upon any proceſs iſſuing out of this court where the cauſe of action does not amount to the ſum of ten pounds or upwards; and in all caſes where the cauſe of action ſhall not amount to ten pounds or upwards, the plaintiff ſhall not arreſt the body of the defendant, but ſhall ſerve him perſonally with a copy of the proceſs. *Stat.* 12 *Geo.* 1. *c.* 29. §. 1, 2. *Stat.* 5 *Geo.* 2. *c.* 27. *Stat.* 13 *Geo.* 2. *c.* 18.

But defendant to be ſerved with copy of proceſs.

No ſpecial bail in Wales *or the counties Palatine, unleſs affidavit be made of the cauſe of action, and that the ſame amounts to* 20 l. *and upwards.*

No ſheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or proceſs iſſuing out of any of the courts of record at *Weſtminſter*, ſhall hold any perſon to ſpecial bail, unleſs an affidavit be firſt made in writing, and filed in that court out of which ſuch writ or proceſs is to iſſue, ſignifying the cauſe of action, and that the ſame is twenty pounds and upwards; and where the cauſe of action is twenty pounds and upwards, bail ſhall not be taken for more than the ſum expreſſed in ſuch affidavit. *Stat.* 11 & 12 *W.* 3. *c.* 9. *ſ.* 2.

Proceedings by original in actions not requiring bail.

Where no bail required, a common clauſum fregit *to be ſued out.*

If the cauſe of action does not require bail, a *Præcipe* is to be made out for a common *Capias* in treſpaſs, on which the plain-

May declare thereon in any county, or for any cauſe of action.

tiff may declare in any county, or for any cauſe of action, as the caſe ſhall require. The filacer makes out the *Capias*, and procures the original from the curſitor, and returns and files it.

The Præcipe.

Præcipe *in treſpaſs.*

Middleſex, Capias for *W. P.* againſt *J. B.* late of the pariſh of St. *Clement Danes* in the county of *Middleſex*, taylor, broke the *Cloſe* at *Weſtminſter*.

L. R. 22 *Dec.* 1755. *Returnable on the octave of St.* Hilary.

The *Præcipe* is to be carried to the proper filacer, who will make out the *Capias*.

The Form of the Capias.

Capias *thereon.*

	s.	*d.*
Original	1	0
Filing	0	4
Capias	0	10
Duty	1	6
Seal	0	7
	4	3

GEORGE the ſecond, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take *J. B.* late of the pariſh of St. *Clement Danes* in your county, *Taylor*, if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the octave of St. *Hilary*, to anſwer *W. P.* in a plea, wherefore with force and arms he broke the *Cloſe* of the ſaid *W.* at *Weſtminſter*, and did other injuries to him, to his great damage, and againſt our peace; and have there this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the twenty-ninth day of *November* in the thirtieth year of our reign.

You

You may put four defendants in a writ; but there muſt be but one plaintiff, unleſs it be a joint action.

Then a copy of the proceſs muſt be made with an *Engliſh* notice, ſubſcribed as mentioned in the two next paragraphs, which copy muſt be ſerved on the defendant.

Notice to be written on the copy of the proceſs.

But by *Stat.* 5 *Geo.* 2. *c.* 27. §. 4. (made perpetual by *Stat.* 21 *Geo.* 2. *c.* 3.) upon every copy of ſuch proceſs ſhall be written a notice of the intent and meaning of ſuch ſervice, to the effect following, *viz.*

The form of the notice.

C. D. You are ſerved with this proceſs, to the intent that you may, by your attorney appear in his majeſty's court of *Common Pleas* at the return thereof, being the twentieth of *January* 1756. [as the caſe ſhall happen to be] in order to your defence in this action.

The day of the return to be inſerted though a Sunday.

The very day of the return of the proceſs muſt be inſerted, although it ſhould happen to be a *Sunday*.

5 s. for making and ſerving the copy.

No more than 5 *s.* is to be taken for the making and ſerving a copy of ſuch proceſs, and no fee for the notice. *Stat.* 5 *Geo.* 2. *c.* 27.

In franchiſes the proceſs to be ſerved by the proper officer.

In particular franchiſes and juriſdictions the proper officer there ſhall execute ſuch proceſs. *Stat.* 5 *Geo.* 2. *c.* 27.

But if the proceſs be not ſerved by the proper officer, the court will not ſtay proceedings; the lord of the liberty may bring his action, if he thinks proper.

Capias and not original to be ſerved.

The proceſs, of which a copy is directed by the above ſtatutes to be ſerved on the defendant, muſt be a *Capias*, and not an original writ.

Of ſerving proceſs in a county palatine.

If the proceſs be directed into a county palatine, the defendant is to be ſerved with a copy of ſuch proceſs, and not with a copy of the mandate thereupon from the biſhop or chancellor to the ſheriff of the county.

Where copy ſerved, it muſt be with notice, tho' action for above 10 l. or writ ſpecial.

When the defendant is ſerved with a copy of a writ, there muſt be an *Engliſh* notice ſubſcribed as above directed, tho' the cauſe of action ſhould be above ten pounds, or the writ ſhould be a ſpecial *Capias*.

Proceſs againſt baron and feme, ſervice on the huſband ſufficient.

If the proceſs be againſt *baron* and *feme*, ſervice on the huſband is ſufficient for both; and if the huſband does not appear for himſelf and his wife, the plaintiff may enter an appearance for both.

In a joint action each defendant muſt be ſerved.

But in a joint action againſt two or more defendants, each defendant muſt be ſerved with a copy of the proceſs.

Attorney's name to be on copy of proceſs.

Proceedings were ſtayed by the court, becauſe no attorney's name was ſet upon the copy of the proceſs ſerved upon the defendant. *Trin.* 16 *G.* 2. *C. B. Chapman* v. *Ryal. Vide poſtea ſtat.* 2 *G.* 2. *c.* 23. §. 22. *& ſtat.* 12 *G.* 2. *c.* 13. §. 4.

Whether proceſs may be ſerved on the day of the return.

It has been formerly held, that ſervice of the proceſs at ſix o'clock in the evening, on the day of the return, was good ſervice, for that there was no fraction of a day. *Paſch.* 1 *G.* 2. *C. B. Mathews* v. *Partridge.* Or if it was alledged, that the court was riſen before the ſervice, which was at ſeven o'clock in

in the evening of the day of the return, yet the judges would not presume, that the service was after the rising of the court, unless it was proved by affidavit. *Hil.* 5 *G.* 2. *C. B. Hayne* v. *Cane.* Yet by a latter resolution, *viz. Hil.* 16 *G.* 2. *C. B. Foot* v. *Hume*, it seems as if the court required, that the process should be served before the day of the return. And *Hil.* 29 *Geo.* 2. *Askley* against *Mackarley*, proceedings were stayed, because the copy of the process was served on the return day at three o'clock in the afternoon.

Irregularity in process to be complained of before interlocutory judgment.

If there be any irregularity in the service of the process, or in the notice subscribed to the process, the defendant must apply to the court before interlocutory judgment is signed.

And process to be annexed to affidavit.

If the defendant complains of any irregularity in the process, or notice subscribed, he must annex the copy to his affidavit.

Proceedings by original in actions requiring bail.

If bail required, affidavit to be made of cause of action.

If the cause of action amounts to ten pounds or upwards, affidavit must be made and filed of the cause of action. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3.

The form of an affidavit of a debt in order to hold the defendant to bail.

Common Pleas.

The form of the affidavit. *H. H.* of, *&c.* maketh oath, that *G. W.* late of, *&c.* is juſtly and truly indebted to this deponent in the ſum of 200 *l.* on one bond or obligation under the hand and ſeal of the ſaid *G. W.* bearing date, *&c.* whereby the ſaid *G. W.* is bound to this deponent in the penal ſum of 400 *l.* conditioned for the payment of 200 *l.* and intereſt to this deponent, on the day of laſt paſt.

Sworn, &c.

Before whom the affidavit to be made. This affidavit may be made before any judge of this court, or commiſſioner authoriſed to take affidavits in this court, or before the officer, who iſſues the writ or his deputy; and for which affidavit 1 *s.* above the ſtamp-duties ſhall be paid, and no more. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3.

By the general rule and practice of this court, affidavits taken before attornies (as commiſſioners) in cauſes, wherein they were concerned for the parties in whoſe behalf ſuch affidavits were made, have been deemed inſufficient.

Affidavit to hold to bail, or of ſervice of proceſs, may be made before plaintiff's at-

But an affidavit made in order to hold the defendant to bail before proceſs ſued out, or an affidavit of ſervice of proceſs where only a common appearance is required, may be ſworn before the plaintiff's attorney, being a com-

commiſſioner, and may be made uſe of for the purpoſe aforeſaid. *Paſ.* 13 *Geo.* 2. *torney, if a commiſſioner.*

Notwithſtanding the plaintiff makes an affidavit of his debt, or other cauſe of action, yet the matter of bail is examinable by the court. *Matter of bail examinable by the court.*

The next thing is to make out a *Præcipe* for the filacer, which you muſt ſuit to the nature of your action, according to the following precedents.

Middleſex. Command *G. W.* late of *Weſtminſter* in your county, eſq; * otherwiſe called *G. W.* of *Weſtminſter* in the county of *Middleſex*, eſq; that he render to *H. H.* 400*l.* which he owes him, and unjuſtly detains. *A* Præcipe *in debt.*

Ret. on the morrow of All Souls.

J. B. [*the attorney*]

19 *Aug.* 1756.

Affidavit for 200*l.*

GEORGE the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. To the ſheriff of *Middleſex*, greeting. We command you, that you take *G. W.* late of *Weſtminſter* in your county, eſq; * otherwiſe called, (&c.) if he ſhall be found in your bailiwic, *The* Capias *thereon.*

* The *Alias dict'* is uſed where the debt ariſes by ſpecialty, but it is ſaid not to be neceſſary to be inſerted, and that it may be and is better left out, and was ſo adjudged Alias dict' *not neceſſary.*

bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter*, on the morrow of *All Souls*, to anſwer *H. H.* of a plea, that he render to the ſaid *H. H.* four hundred pounds which he owes him, and unjuſtly detains, as it is ſaid; and have there this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the 7th day of *July* in the thirtieth year of our reign.

Præcipe *in debt againſt two defendants.*

Officina brevium 22.

Middleſex. Command *W. C.* late of the pariſh of St. *Clement Danes* in your county, tallow-chandler, that he render to *W. D.* 30*l.* which he owes him, and unjuſtly detains. Command *C. M.* late of, *&c.* that he render to the ſaid *W. D.* 56*l.* which he owes him, and unjuſtly detains.

Ret. &c.

J. B.
10 *Jan.* 1757.

Affidavit againſt { *W. C.* for 30*l.* / *C. M.* for 56*l.*

Fines payable to the king.

On all *Præcipes quod reddat*, if the ſum exceeds forty pounds, a fine is payable to the king in the following proportions.

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adjudged in this court in lord chief juſtice *Eyre*'s time in an action upon a bail bond, *Darby* againſt *Minſhull*.

On a Latin *bond the* Alias dict', *if uſed, muſt be in* Latin.

If the action be in debt on a bond, and the obligation is in *Latin*, the *Alias dict'* (if inſerted) muſt be alſo in *Latin*, as thus, Command *John Doe* late of *London*, gentleman, otherwiſe called *Johannem Doe de London' generoſum.*

From

	l.	*s.*	*d.*
From 40 pounds to 100 marks	0	6	8
From 100 marks to 100 pounds	0	10	0
From 100 pounds to 200 marks	0	13	4
From 133. 6. 8. to 166. 13. 4.	0	16	0
From 166. 13. 4. to 200 pounds	1	0	0
And ſo conſequently for every 100 marks more — —	0	6	8
And for every 100 pounds more	0	10	0

Wherefore if you would avoid the fine draw out a *Præcipe* for a *Capias* in treſpaſs with an *Acetiam*, in debt in this manner.

Middleſex. Capias for *T. D.* againſt *A. S.* late of the pariſh of St. *Martin in the fields* in your county, ſurgeon, broke the *Cloſe* at *Weſtminſter*; and alſo in a certain plea of debt upon demand for 80 *l.*

Præcipe *for a* Capias *in treſpaſs with an* Acetiam *in debt.*

Ret' &c.

R. R. by *L. R.*
26 *May* 1756. } Affidavit for 40 *l.*

GEORGE the ſecond, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take *A. S.* late of, *&c.* if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter*, on to anſwer *T. D.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *T.* at *Weſtminſter*, and did other wrongs to him, to the great damage of the ſaid *T.* and againſt our peace; and alſo, that the ſaid *A.* anſwer to the ſaid *T.* according

Capias *thereon.*

cording to the cuſtom of our court of the bench, in a certain plea of debt upon demand for forty pounds; and have there this writ. Witneſs, *&c.*

Præcipe *in treſpaſs, with an* Acetiam *in caſe upon promiſe.*

Middleſex. Capias for *L. R.* againſt *L. K.* late of the pariſh of St. *James* in the liberty of *Weſtminſter* in your county, widow, broke the cloſe at *Weſtminſter*; and alſo in caſe upon promiſe for 50 *l.*

Ret'

Capias *thereon.*

GEORGE the ſecond, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take, *&c.* (as before); and alſo, that the ſaid *L. K.* may anſwer the ſaid *L. R.* according to the cuſtom of our court of the bench, in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *L. R.* fifty pounds; and have there this writ. Witneſs, *&c.*

Præcipe *in caſe againſt two defendants.*

London. Capias, for *T. W.* againſt *J. M.* late of *London*, Gent. and *S. C.* late of *London*, eſq; treſpaſs; and alſo againſt the ſaid *J.* for 90 *l.* upon promiſe; and alſo againſt the ſaid *S.* for 30 *l.* upon promiſe.

Ret'

Præcipe *in aſſault.*

Lincoln. Capias for *J. P.* againſt *H. B.* late of *Stamford* in your county, grocer, in a plea of treſpaſs and aſſault.

Ret'

Upon

Upon a dangerous aſſault and battery that may require bail, an affidavit muſt be made of the fact at large, whereupon a judge will make an order for holding the defendant to bail in ſuch ſum as on the circumſtances of the caſe he ſhall think reaſonable; and then you ſue out a *Præcipe* for a common *Capias* with an *Acetiam.*

On a dangerous battery bail may be had on an affidavit and a judge's order.

London. Capias for *W. H.* againſt *J. B.* late of *London*, *Cabinet-maker*, broke the *Cloſe* at *London*; and alſo in treſpaſs and aſſault, to the damage of the ſaid *W.* 200 *l.*

Præcipe *in aſſault with an* Acetiam.

Ret'

Bail by order, on Affidavit for 100 *l.*

J. W.

Middleſex. Capias for *E. L.* againſt *G. C.* late of *Weſtminſter* in your county, Gentleman, otherwiſe called (as in the indenture) in a plea, that he perform to the ſaid *E.* the covenant made between them, according to the force, form, and effect of a certain indenture made between them.

Præcipe *in covenant.*

Ret'

Southampton. Capias for *T. D.* againſt *J. W.* late of, *&c.* that he render to the ſaid *T.* his reaſonable account for the time in which he was receiver of the money of the ſaid *T.* &c.

Præcipe *in account as receiver.*

If as a bailiff, then as before to —— for the time in which he was bailiff of the ſaid *T.* in *L.* &c.

As bailiff.

If

Bailiff and receiver. If as bailiff and receiver, then —— for the time he was his bailiff in *L.* and receiver of the money of the said *T.* &c.

Præcipe *in annuity.* *Lincoln.* Command *J. P.* late of *C.* in the county aforesaid, Gentleman, that he render to *O. R.* 60*l.* which are in arrear to him for a certain annuity of 30*l.* which he owes him, and unjustly detains, *&c.*

Where a Testatum capias *necessary.* If the defendant lives not in the county wherein you intend to try the action, and the cause of action requires bail, you make out a *Præcipe* for a *Testatum capias*, which you carry to the filacer for that county in which you intend to try the cause; as, suppose the defendant lives in the city of *York*, and you would try the cause in *London*, you make out a *Præcipe* in the following form, which you carry to the filacer for *London.*

Præcipe *for a* Testatum capias. *London. Capias* for *H. P.* against *R. J.* late of the city of *York*, bookseller, broke the close at *London.*

Returnable on the octave of St. Hilary.

City of *York*, *Testatum capias*, and also for 200*l.* upon promise.

Returnable on the octave of the Purification.

J. D.

Affidavit for 100*l.* 31 *Dec.* 1756.

GEORGE

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, *&c.* To the ſheriffs of the city of *York*, greeting. We command you, that you take *R. J.* late of the city of *York*, bookſeller, if he ſhall be found in your bailiwic, and keep him ſafely ſo that you may have his body before our juſtices at *Weſtminſter*, on to anſwer *H. P.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *H. P.* at *London*, and did other injuries to him, to the great damage of the ſaid *H.* and againſt our peace: And alſo, that the ſaid *R.* anſwer the ſaid *H.* according to the cuſtom of our court of the bench, in a certain plea of treſpaſs upon the caſe on promiſe, to the damage of the ſaid *H.* of two hundred pounds. And whereupon our ſheriffs of *London* returned to our juſtices at *Weſtminſter*, at a certain day now paſt, that the ſaid *R.* was not found in their bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *R.* doth lie hid, and run from place to place in your county; and have there this writ. Witneſs, *&c.*

Teſtatum capias.

Acetiam.

If the defendant lives in any liberty which the ſheriff cannot enter, you may get the filacer to make out a *Non omittas*, whereupon the ſheriff may enter.

The

The form of a Non omittas.

A Non omittas capias.

GEORGE the ſecond, by the grace of God, king of *Great Britain*, *France* and *Ireland*, defender of the faith, *&c.* To the ſheriff of *L*——, greeting. We command you, that you do not omit by reaſon of any liberty of the liberty of the rape of *D.* in your county, but that you take *S. C.* late of, *&c.* if he ſhall be found in your bailiwic, and that you keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter*, on to anſwer *W. N.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *W.* at *G.* and did other injuries to him, to the great damage of the ſaid *W.* and againſt our peace. And alſo that the ſaid *S.* may anſwer the ſaid *W.* according to the cuſtom of our court of the bench, in a certain plea of debt upon demand for thirty pounds. And whereupon you returned to our juſtices at *Weſtminſter* at a certain day now paſt, that the bailiff of the aforeſaid liberty, whom you commanded, by virtue of our ſaid writ to you thereupon directed, to take the ſaid *S.* gave you no anſwer thereto; and have there, *&c.*

Acetiam.

By the like writ out of the court of *King's Bench* the ſheriff may enter any liberty, for the writ is *Quod non omittas propter aliquam libertatem in com. tuo quin capias, &c.* 5 *Co.* 92.

If

If the defendant cannot be taken on the first writ, or served with a copy of it, as the case shall be, and you don't propose to outlaw him, you sue out a *Capias* by continuance, the *Præcipe* for which is the same as before, only this difference, instead of saying, "*Capias* for *T. D.* you say, *Capias* "by continuance for *T. D.*" But the writ is exactly the same as the first, without the distinction of *Alias* or *Pluries*.

Where the defendant cannot be arrested on the first writ, a Capias *by continuance is to be made out.*

	s.	*d.*
Cap. *by cont.*	0	10
Duty	1	6
Seal	0	7
	2	11

As the filacer makes out all these writs, I think it needless to trouble the reader with any more precedents of them.

Every officer or clerk of this court, who shall sign any writ or process before judgment, to arrest any person thereupon, shall, before the signing thereof, set down upon such writ or process, the day and year of his signing the same, which shall be entered on the remembrance upon the forfeiture of 10*l.* *Stat.* 5, 6 *W. & M. c.* 21. §. 3. and 9, 10 *W.* 3. *c.* 25. §. 42.

The day of signing the writ to be set down on the writ.

Where the plaintiff's cause of action shall amount to the sum of 10*l.* or upwards, and affidavit be thereof made, the sum specified in such affidavit shall be indorsed on the back of the writ or process, for which sum so indorsed, the sheriff or other officer to whom such writ or process shall be directed shall take bail, and for no more. 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3.

Sum sworn to, to be indorsed on the writ.

Every writ for arresting the body, writ of execution, and every warrant that shall be made out on any such writ or execution, shall, before the service thereof, be subscribed

The name of the attorney to be subscribed on every writ for arresting the body, exe-

cution and warrant thereon.

ſcribed or indorſed with the name of the attorney, in a common legible hand, by whom ſuch writ, execution or warrant, ſhall be ſued forth; and if ſuch attorney ſhall not be the attorney immediately retained by the plaintiff, then alſo with the name of the attorney ſo immediately retained. *Stat.* 2 *Geo.* 2. *c.* 23. §. 22.

And on every copy of any writ to be ſerved on the defendant.

Every copy of any writ or proceſs, that ſhall be ſerved on any defendant, ſhall before the ſervice thereof be in like manner ſubſcribed or indorſed with the name of the attorney, who ſhall be immediately retained by the plaintiff in ſuch writ or proceſs. *Same ſtat. Vide antea fo.* 70.

But the act doth not make the proceſs void for want thereof.

In caſe the attorney's name be not put to the writ, the act of parliament doth not make the proceſs void; and tho' the attorney may be puniſhed for not putting his name to it, the party ought not to ſuffer. *Sed Q. & vide poſtea.*

The not ſubſcribing the attorney's name on a warrant doth not vitiate the writ.

The not ſubſcribing or indorſing the name of the attorney on any warrant that ſhall be made out upon any writ, proceſs or execution, ſhall not vitiate the ſame; but ſuch writ, proceſs and execution, and all proceedings thereon, ſhall be as valid and effectual, notwithſtanding ſuch omiſſion, as if the act of 2 *Geo.* 2. had not been made; *Provided* the writ whereon ſuch warrant is made out be regularly ſubſcribed or indorſed according to the ſaid act. *Stat.* 12 *Geo.* 2. *c.* 13. §. 4.

Of

Of common appearances.

COmmon appearances to writs made out by the filacers are entered with the filacers, for which you pay 2 *s.* if one defendant, *viz.* 1 *s.* for the king's duty, and 1 *s.* for entering the appearance, and 4 *d.* for every defendant more than one. *Appearance to be entered with filacer.*

Where a defendant is ſerved with a copy of a proceſs, he muſt cauſe a common appearance to be entered on the return, or within eight days after ſuch return. *Stat.* 5 *Geo.* 2. *c.* 27. *Defendant to appear in eight days.*

And in caſe the defendant ſhall not appear within eight days after the return of ſuch writ or proceſs, the plaintiff, upon making and filing an affidavit of the perſonal ſervice of ſuch writ or proceſs, may enter a common appearance for the defendant, and proceed thereon, as if ſuch defendant had entered the ſame. *Stat.* 12 *Geo.* 1. *c.* 29. *Or plaintiff may on affidavit of ſervice appear for him and proceed.*

In the Common Pleas,
John Doe
againſt
Richard Roe, late of *Petersfield* in the county of *Southampton*, ſadler.

J. S. of, *&c.* Gentleman, maketh oath, that he, this deponent, did, on the day of at *Petersfield* in the ſaid county of *Southampton*, perſonally ſerve the defendant *John Doe* with the writ or proceſs *The form of the affidavit.*

hereunto annexed, by ſhewing him the ſaid annexed writ or proceſs, and at the ſame time delivering to him a true copy thereof, on which copy was an *Engliſh* notice in writing of the intent and meaning of ſuch ſervice, as by the ſtatute in that caſe made is required.

Sworn, &c. *J. S.*

Before whom the affidavit is to be made.

This affidavit is to be filed *gratis*, and may be made before any judge of the court, or commiſſioner authoriſed to take affidavits, or before the proper officer for entering the appearance, or his deputy. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3. vide antea. *fol.* 72. the rule of *Paſ.* 13 *Geo.* 2.

The eight days to appear excluſive of the return day.

The defendant has eight days to enter his appearance, excluſive of the return day, *e. g.* if the writ be returnable on the octave of St. *Hilary*, which is the 20th day of *January*, the plaintiff cannot enter an appearance for the defendant, according to the ſtatute, until the 29th day of *January*.

Irregularity in plaintiff's entering appearance for defendant to be complained of before judgment.

If the plaintiff enters an appearance for the defendant before the time the defendant has to enter his appearance is expired, the defendant muſt complain of this irregularity before judgment is ſigned.

Of bail.

In London *or* Middleſex 4 *days to put in bail.*

IN *London* and *Middleſex* the defendant has four days, excluſive of the appearance day of the return of the writ, to put in

in bail; and in any other city or county he has eight days excluſive of the appearance day. *Hil.* 9 *An.*

In any other city or county eight days.

If the bail be to be put in in town, the filacer, or other officer who iſſued out the writ, is to attend with the attorney and bail on one of the judges at his chambers, who will take the recognizance, and the filacer or other officer will make an entry of it in his book, which entry he will afterwards draw up in proper form, if there be occaſion to ſue the bail.

If in town, to put in bail before a judge at his chambers.

But care muſt be taken to apply to the proper filacer or officer, in whoſe office the bail ought to be entered; for if the bail be entered in a wrong office, the plaintiff may proceed on the bail-bond, and the defendant, before he ſhall be admitted to plead, ſhall pay full coſts to the plaintiff. *Trin.* 1 *W. & M.*

To be entered with the proper filacer.

And in caſe of a *Teſtatum capias*, bail muſt be entered, and filed with the filacer of that county wherein the action was firſt laid, and not with the filacer of that county wherein the defendant was arreſted; for otherwiſe the bail-bond may be aſſigned; and it is not to be preſumed or expected, that the plaintiff's attorney will ſearch with a wrong filacer.

How on a Teſtatum capias.

In caſe the proper filacer or officer cannot attend, the recognizance may be taken without him, on a piece of parchment properly ſtampt, *viz.* with a double twelve-penny ſtamp.

And in ſuch caſe you make the entry in this manner.

The form of a recognizance of bail taken before a judge.

London. Capias, *againſt* T. M. *late of* London, *Carpenter, at the ſuit of* W. D. *for* 100*l. upon promiſe, returnable on the morrow of the Holy* Trinity.

Affidavit for 50l.

Bail, W. S. *of* Pall Mall *in the pariſh of Saint* James *in the liberty of* Weſtminſter *and county of* Middleſex, *eſq;*
C. S. *of the ſame place apothecary.*

The defendant bound in 100l.
Each of the bail in 50l.

Taken and acknowledged the day of &c. before

J. S. Attorney for the defendant.

If the defendant be not preſent, and does not enter into the recognizance, then the bail are bound in double the ſum the cauſe of action is ſworn to amount unto.

When bail is put in you give notice thereof in writing to the plaintiff's attorney, as follows.

W. D. plaintiff
againſt
T. M. defendant.

SIR,

SIR,

Take notice, that *W. S.* of [*naming the street and parish particularly, as in the bail-pice or filacer's book*] esq; and *C. S.* of, *&c.* apothecary, were this day put in as bail for the defendant in this cause, before Mr. justice——

Notice of bail put in.

Your humble servant,

J. S.
Attorney for the def.

To Mr. S. T. *attorney for the plaintiff.*

10 June 1745.

If the plaintiff's attorney excepts to the bail, he marks the exception in the filacer's book or on the bail-piece, and gives notice thereof in writing to the defendant's attorney.

If the plaintiff doth not mark the exception on the bail-piece, or in the filacer's book, the bail will become absolute in 20 days, notwithstanding he has given notice of exception within the 20 days.

The bail, if excepted to, must justify in four days, or other bail must be added, who can justify within that time, *vide postea*, fol. 93. *Rule Trin.* 3 & 4 *Geo.* 2.

The defendant's attorney must give notice of adding or justifying or both, as the case shall be, *&c.*

W. D. plaintiff
against
T. M. defendant.

S I R,

Notice of bail added, and of juſtifying. This day before Mr. juſtice ——— *R. H.* of, *&c.* in the county of *Middleſex*, victualler, was added to the bail already put in for the defendant in this cauſe, and on *Saturday* morning next, the ſaid *R. H.* and alſo *C. S.* one of the bail before put in for the ſaid defendant in this cauſe, will juſtify themſelves as bail in court.

Your humble ſervant,
J. S.
attorney for the def.
11 June 1745.

To Mr. S. T. *attorney for the plaintiff.*

He muſt make an affidavit of the ſervice of the notice, and get a ſerjeant to move for leave to juſtify in court.

Common Pleas.

W. D. plaintiff
againſt
T. M. defendant.

Affidavit of the ſervice of the notice. *A. S.* clerk to Mr. *J. S.* attorney for the defendant in this cauſe, maketh oath, that he, this deponent, did on *Wedneſday* laſt, being the eleventh day of *June* inſtant, ſerve Mr. *S. T.* the attorney for the plaintiff in this cauſe, with the notice hereunto annexed, by delivering a true copy of the ſaid notice to the ſaid Mr. *T.*

Sworn, &c. *A. S.*

The

The expence out of pocket is generally as follows:

Putting in bail before a judge.

	l.	*s.*	*d.*	
Duty —— ——	0	2	0	
Filacer in ſome counties	0	6	0	
Judge's clerk, in term 5 *s.* in vacation	0	12	0	
				1 0 0

Adding,

Filacer —— ——	0	5	4	
Judge's clerk —— —	0	2	0	
——				0 7 4

Juſtifying in court,

Affidavit of notice ——	0	2	0	
Serjeant's fee —— ——	0	10	6	
Filacer —— ——	0	5	4	
Secondary —— ——	0	1	0	
Cryers —— ——	0	2	6	
——				1 1 4
				2 1 8

Judges may appoint commiſſioners to take bail.

The judges of this court, or any two of them, whereof the chief juſtice to be one, may by commiſſions under the ſeal of the court, from time to time, impower ſuch perſons, other than attornies or ſolicitors, as they ſhall think fit, in any of the counties of *England*, to take ſuch recognizances of bail as any perſon ſhall be willing to make before

before them, in any action or ſuit depending in this court, in manner and form as the judges of the court have uſed to take the ſame; which recognizance ſhall be tranſmitted to one of the judges, who upon affidavit made of the due taking thereof ſhall receive the ſame, upon payment of the uſual fees: Which recognizance ſhall be of the like effect as if taken *de bene eſſe* before any judge of the court. *Stat.* 4 *W. & M. c.* 4. *Vide antea fo.* 33.

The recognizance to be tranſmitted to one of the judges.

Fee for taking recognizance 2 s.

For taking this recognizance the commiſſioner is to take 2 *s.* and no more.

Judges of aſſize may take the recognizance of bail.

The judges of aſſize may take recognizances of bail, which ſhall be tranſmitted and received as aforeſaid, without oath. *Same ſtat.*

Where bail may juſtify by affidavit.

The bail may juſtify themſelves by affidavit before the commiſſioner, unleſs they live in *London* or *Weſtminſter*, or within ten miles thereof.

Bail put in before a judge muſt juſtify in perſon.

Bail put in before a judge muſt juſtify in perſon, and cannot juſtify by affidavit.

Upon this act for taking bail by commiſſioners in the country the court has made ſeveral rules, *viz.*

Of putting in bail before a commiſſioner.

Before any bail ſhall be taken by virtue of this act, a true copy in parchment of the writ, to which the defendant is to put in bail, ſhall be brought to the commiſſioners, and on the ſaid copy the recognizance or bail-piece ſhall be ingroſſed in this or the like form, as the caſe ſhall be.

The recognizance.

Bail, *John Denn* of *Blackbarnſley* in the parish of *Settle* in the county of *York*, gentle-

gentleman, and *Richard Fenn* of the ſame place, gentleman.

The party himſelf in 20*l.*
Each of the bail in 10*l.*

Taken and acknowledged on the day of in the year of our lord conditionally (or *de bene eſſe*) before me *A. B.* one of the commiſſioners.

The condition of the recognizance.

You (*naming the defendant, if preſent*) do acknowledge to owe unto the plaintiff 20*l.* You (*naming the bail*) do ſeverally acknowledge to owe unto the plaintiff the ſum of 10*l.* a-piece, to be levied upon your ſeveral goods and chattels, lands and tenements, upon condition, that if the defendant be condemned in the ſaid action, he ſhall pay the condemnation-money, or render himſelf a priſoner to the *Fleet* for the ſame; and if he fail ſo to do, you (*naming the bail*) do undertake to do it for him. *Condition.*

Affidavit of the due taking ſuch bail ſhall be made before ſome judge of this court to whom the bail ſhall be tranſmitted, or before ſome perſon having power to take affidavits in cauſes depending in this court. *Paſ. 5 W. & M.* *Affidavit to be made of the taking ſuch bail.*

All bails taken by any commiſſioner within the diſtance of 40 miles from the cities of *London* and *Weſtminſter*, ſhall be tranſmitted to the lord chief juſtice, or one of the judges of the court within ten days after the taking thereof; *Bail taken by a commiſſioner within* 40 *miles of* Lon-

don, to be tranſmitted in 10 days; above 40 miles in 20 days; Unleſs, &c.

thereof; and all bails taken by any commiſſioner above the diſtance of 40 miles from the ſaid cities of *London* and *Weſtminſter*, ſhall be tranſmitted within twenty days after the taking thereof, unleſs the juſtices ſhall be on the circuits, and then as ſoon as one of them ſhall return to *London* out of his circuit. *Same rule.*

And filed with the proper officer, or plaintiff to proceed on the bail-bond.

And after ſuch tranſmiſſion ſhall be forthwith filed with the proper officer to be entered upon record, otherwiſe ſhall be as no bail, and the plaintiff to be at liberty to proceed on the bail-bond as if no ſuch bail had been put in; and the defendant, in caſe he be admiſſable to plead to the original action, ſhall not be admitted ſo to do, unleſs he firſt pay the full coſts to the plaintiff for the proſecution on the bail-bond, and plead as of the time when the bail ſhould have been duly entered. *Hil.* 6 *Geo.* 1.

And defendant not to be admitted to plead to original action, but on payment of coſts, &c.

On bail tranſmitted, judge's clerk to take the fees for the entry.

Bails taken before commiſſioners and tranſmitted to and allowed by a judge, ſhall be delivered to the clerk of the judge, who ſhall allow the ſaid bail, which clerk ſhall take the fees due to the proper officer for the entry thereof, and forthwith deliver the ſame to be filed. *Mich.* 13 *Geo.* 1.

No bails to be received or filed, unleſs tranſmitted within the times aforeſaid.

All bails taken before commiſſioners in the country ſhall be tranſmitted and filed with the proper officer, according to the rule *Hil.* 6 *Geo.* 1. And no ſuch bail ſhall be received or filed, unleſs tranſmitted within the reſpective times appointed by the ſaid rule, without leave of the court. *Mich.* 6 *Geo.* 2.

If the bail be not filed within the times above directed, application muſt be made to the court, the judges in the treaſury will not give leave to file it, the rule ſaying, it ſhall not be filed without leave of the court.

If not filed in time, application to the court; no leave in the treaſury.

Every defendant's attorney ſhall give notice to the plaintiff's attorney of the taking ſuch bail within four days after the caption thereof. *Mich.* 13 *Geo.* 1.

Notice of ſuch bail to be given within 4 days.

Every commiſſioner is to have a book for entring the names of the defendant and his bail, and of the plaintiff, as in the bail-piece, and the time of taking thereof; and the name of him by whom ſuch bail ſhall be tranſmitted.

Name of defendant and his bail to be entred in commiſſioner's book.

The plaintiff's attorney may repair to ſuch book for the names of the bail, to the end he may inquire of the ſufficiency of them; and if they are found inſufficient, may except againſt them within twenty days after the ſaid bail is tranſmitted and notice to the plaintiff or his attorney of taking thereof; and in that caſe the defendant muſt either put in better bail, or the cogniſors of ſuch bail muſt juſtify themſelves in open court by affidavit made before the commiſſioner that took the ſaid bail, or by oath made in court, or before one of the judges. *Paſ.* 5 *W. & M.*

Where plaintiff's attorney to ſearch.

Exception to be within twenty days after bail tranſmitted, and notice.

And then better bail, or bail to juſtify.

If ſpecial bail be excepted to, the defendant ſhall perfect his bail within four days after exception taken, and in default thereof the plaintiff may proceed on the bail-bond. *Trin.* 3 & 4 *Geo.* 2.

Bail excepted to, to be perfected within 4 days.

Additional bail are to juſtify, tho' not excepted to.

If the plaintiff excepts to the bail, and the defendant adds further bail, the additional bail muſt juſtify themſelves in court within the four days, without waiting for the plaintiff's excepting to them, for the plaintiff is not bound to except to additional bail; and in default of juſtifying, as aforeſaid, he may proceed on the bail-bond.

Bail excepted to in the vacation to juſtify within the firſt four days of the next term.

If the plaintiff except to bail in the vacation, and will not be ſatisfied with juſtification before a judge, the bail muſt juſtify within the firſt four days of the next term at leaſt. It has been held, that a juſtification before a judge was no juſtification but by the plaintiff's conſent. That by the general rule of this court requiring bail to be perfected within four days after exception, muſt be meant the next four days in term. The fair way is to give notice of a juſtification in court within four days after exception, but 'tis not requiſite.

What notice to be given of juſtifying.

Notice to juſtify muſt be given two days before the day of juſtification; and a *Sunday* ſhall not be reckoned as one of the two days; notice on the *Saturday* to juſtify on the *Monday* is inſufficient.

No attorney to be bail.

No attorney of this or any other court, or any perſon practiſing as ſuch, ſhall be bail in any ſuit or action depending in this court. *Mich. 6 Geo. 2.*

No ſheriff's officer.

No ſheriff's officer, bailiff, or other perſon concerned in the execution of proceſs ſhall be permitted or ſuffered to become bail in any action or ſuit depending in this court. *Same term.* It has been held that this rule extends

tends to marſhal court officers, and all officers executing the proceſs of this and all other courts.

Of aſſigning the bail bond.

In caſe the defendant does not put in bail by the time limited by the courſe of the court, the plaintiff may take an aſſignment of the ſheriff's bail-bond, if he approves of the ſufficiency of the obligors.

Sheriff on requeſt to aſſign bail bond to plaintiff.

The ſheriff, at the requeſt and coſts of the plaintiff or his lawful attorney, ſhall aſſign to the plaintiff the bail-bond by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two or more credible witneſſes, which may be done without any ſtamp, provided the aſſignment ſo indorſed be duly ſtamped before any action brought thereon. *Stat.* 4 & 5 *Ann. c.* 16. §. 20.

Who may bring an action in his own name.

And if the bail-bond be forfeited, the plaintiff may after ſuch aſſignment bring an action thereupon in his own name, and the court may by rule give ſuch relief to the plaintiff and defendant in the original action, and to the bail on the ſaid bond, as ſhall be agreeable to juſtice and reaſon, and ſuch rule of court ſhall have the effect of a defeaſance to ſuch bail-bond. *Same ſtat.*

When bail-bond may be put in ſuit.

No bail-bond taken in *London* or *Middleſex* ſhall be put in ſuit till four days excluſive of the appearance-day of the return of the writ on which the bail-bond was taken; and no bail-bond taken in any other city or county ſhall be put in ſuit till after eight days excluſive of the appearance-day of the return of the proceſs, and all proceedings

to

to the contrary thereof ſhall be ſet aſide with coſts. *Hil.* 9 *Ann.*

E. G. In a country cauſe if the writ be returnable *tres Michaelis*, the defendant has to the 31ſt of *October* to put in bail, and the bail-bond cannot be put in ſuit till the firſt of *November*.

Rule for ſheriff to return the writ.

If the plaintiff does not approve of the bail taken by the ſheriff, he may give the ſheriff a rule to return the writ, and on his returning a *Cepi corpus* he may give him a like rule to bring in the body, and in default thereof may have an attachment againſt him.

And like to bring in the body.

Sheriff not returning a writ within ſix days after rule, to pay coſts.

If any ſheriff, under-ſheriff, or his deputy, or any other officer having the return of any proceſs iſſuing out of this court, or of any precept or warrant thereupon, ſhall neglect or refuſe to return the ſame within ſix days after ſervice of a rule of this court for that purpoſe, ſuch ſheriff, under-ſheriff, *&c.* ſhall be liable to pay the coſts occaſioned by ſuch neglect. *Hil.* 8 *Geo.* 1.

An action lies againſt him for a falſe return.

And if the ſheriff returns, that the defendant *Non eſt inventus* in his bailiwic, when he had really arreſted him, an action may be brought againſt him for a falſe return.

If the ſame bail be put in above as given to the ſheriff, the plaintiff may except.

Formerly, If the bail taken by the ſheriff was put in above, the plaintiff could not except againſt ſuch bail; but the ſame ſtood good and abſolute: But now,

In all caſes wherein bail-bonds ſhall be taken, and the ſame bail ſhall be put in above, the plaintiff may except againſt ſuch bail. *Mich.* 6 *Geo.* 2.

And

And unleſs the bail ſo excepted againſt ſhall juſtify themſelves, or other bail be added, who ſhall juſtify themſelves within the time limited by the rules of the court, the plaintiff may take an aſſignment of the bail-bond, and proceed thereon, notwithſtanding he excepted to the ſame perſons when put in as bail above. *and proceed on the bail-bond, notwithſtanding, if they don't juſtify.*

Where proceedings on a bail-bond are ſtaid upon conſent that it ſhall ſtand as a ſecurity for the plaintiff, if he recovers in the original action, it is always intended and ſhould be ſo expreſſed, that judgment be given upon the bail-bond, and that only execution thereon ſhall be ſtaid, and without ſuch conſent, the court will not ſo ſtay proceeding upon the bail-bond, where the plaintiff has been delayed of a trial. But if ſuch delay is through his own neglect it is otherwiſe. Where the defendant dies before judgment could be obtained againſt him in the original action, the court will ſtay proceedings on the bail-bond; but if the defendant lives ſo long after the arreſt, that if he had put in bail in time the plaintiff could have obtained judgment and execution againſt him, the court will not ſtay proceedings on the bail-bond. In like manner, if the defendant becomes a bankrupt and obtains his certificate, the court will ſtay proceedings on the bail-bond. *Of ſtaying proceedings on bail-bond.*

Two perſons at leaſt muſt become bail for the defendant; the putting in one bail only is eſteemed as no bail, not even ſufficient to ground a ſurrender upon, tho' it be *One bail eſteemed as no bail.*

Whether defendant can ſurrender till bail is complete.

done immediately; and the plaintiff in ſuch caſe may proceed on the bail-bond notwithſtanding the ſurrender; for the defendant cannot be ſurrendered until the bail is complete.

But where a defendant after having obtained a judge's order for time to put in and perfect bail, put in bail and ſurrendered himſelf to the *Fleet* in diſcharge of his bail, without previouſly perfecting his bail by a juſtification; the court held it to be regular. Before a ſurrender defendant is delivered to his bail and ſuppoſed to be in their cuſtody; by the ſurrender the cuſtody is altered, and the defendant is in priſon; the worth and ſubſtance of the bail, who by the ſurrender are diſcharged, is totally immaterial.

Debt on recognizance of bail, writ to be ſerved four days before return.

What time to ſurrender thereon.

If an action of debt be brought on a recognizance of bail, the writ muſt be ſerved four days before the return; and the bail may ſurrender the principal on the *Quarto die poſt* of the return *ſedente curia*, but not after the court is riſen.

No action on recognizance of bail, pending a writ of error in the original cauſe.

Though an action of debt on a judgment may be brought pending a writ of error in the original action, and the court will let the plaintiff proceed to judgment, and only ſtay execution till the writ of error is determined; yet if an action of debt be brought on a recognizance of bail pending a writ of error in the original cauſe, the court will ſtay proceedings in ſuch cauſe without the bail giving judgment, for by the judgment the bail would be barred from ſurrendring the principal.

If

If the plaintiff proceeds by *Scire facias* againſt the bail, in caſe of one *Scire facias* return'd *Scire feci*, the bail may ſurrender the principal on the appearance-day of the return of the *Scire facias*; and in caſe of two *Scire facias's* with *Nihils* return'd, the ſurrender muſt be on the appearance-day of the return of the laſt *Scire facias*, *ſedente curia*.

When bail may ſurrender on Sci. fa.

If the defendant dies after a *Ca. ſa.* returned, though before either a *Sci. fa.* or an action of debt be brought, the bail are bound and not relievable, for after the *Ca. ſa.* returned, the recognizance is forfeited by law, and all further time allowed for ſurrendring the principal, as is above mentioned, is merely *ex gratia*, and where there is a poſſibility of ſurrendring the principal, which by his death is become impoſſible.

Bail bound by death of defendant if Ca. ſa. *returned.*

A Capias ad ſatisfaciendum againſt the principal in order to charge the bail, ſhould be left with the ſheriff four days before the return.

Ca. ſa *in order to charge the bail ſhould lie in the ſheriff's office* 4 *days.*

Such *Capias ad ſatisfaciendum* ſhould have fifteen days between the *Teſte* and return; *Vide antea fol.*

And have 15 *days between* Teſte *and return.*

A *Capias ad ſatisfaciendum* returnable at a time when a writ of error is depending, is not a ſufficient foundation to proceed againſt the bail.

Badreturnable pending a writ of error.

One who is bail cannot be a witneſs in the cauſe for his principal, therefore if the defendant ſhould have occaſion to examine one of his bail as a witneſs at the trial, he muſt make an affidavit that ſuch bail is a

Bail can't be witneſs for the defendant.

material witneſs for him in the cauſe, and thereupon move the court that ſuch bail may be ſtruck out of the bail-piece, on adding and juſtifying another in his ſtead.

Bail jointly and ſeverally for 140 l. *verdict for* 300 l. *each ſhall pay* 140 l.

In an action of aſſault and battery the plaintiffs procured a judge's order to hold the defendant to bail for 140 *l.* whereupon the defendant became bound in 280 *l.* and the bail jointly and ſeverally in 140 *l.* The plaintiffs had a verdict for 300 *l.* and brought ſeparate actions on the recognizance againſt the bail. The bail moved the court that on payment of one ſum of 140 *l.* and coſts, proceedings might be ſtayed, and compared this to an action on a bond; but the plaintiffs inſiſted, that there is a difference, for in a bond the condition is to pay the money; and if one obligor pays it, the other ſhall be diſcharged, for the condition is complied with; but in a recognizance the condition is not ſatisfied till the damages recovered be paid, or the defendant ſurrendered. And it was held, that the bail being jointly and ſeverally bound, the actions againſt them could not be diſcharged unleſs the condition of the recognizance was performed, *viz.* that the defendant ſhould pay what was recovered, or ſurrender himſelf to the *Fleet*. *Calverack & Ux.* v. *Pinhero*, *Mich.* 12 *G.* 2.

Of Declarations.

THE next thing the plaintiff's attorney has to do is to prepare his declaration:

And note, That if the action be in — *Summonitus* and *attachiatus.*

Debt,	*Account*,
Detinue,	*Annuity*, or
Covenant,	*Replevin*,

It muſt be ſaid in the declaration, the defendant was ſummoned to anſwer, *&c.*

If the action be in

Caſe,	*Trover*, or
Treſpaſs,	*Ejectment*,

Then the declaration is, that the defendant was attached to anſwer, *&c.*

On a common *Clauſum fregit*, the plaintiff may declare in any county, or for any cauſe of action, for that proceſs is only to bring the party into court. — *On a* Clauſum fregit *may declare in any county, or for any action.*

On a *Clauſum fregit* with an *Acetiam* in debt, caſe, or any other action, the plaintiff may declare in any county, or for any cauſe of action whatſoever, but then he will loſe his bail. — *The like on a* Clauſum fregit, *with an* Acetiam.

In a *Præcipe quod reddat* in debt the plaintiff can declare in no other action but debt, except he deliver a declaration by the by, — *On a* Præcipe quod reddat *muſt declare in debt,*

Except it be by the by.

and in that caſe he muſt firſt deliver a declaration in the original action.

The like on an attachment of privilege.

On an attachment of privilege *de placito debiti*, the plaintiff cannot declare in caſe, or for any cauſe of action but debt, unleſs the declaration be delivered by the by, and in that caſe the plaintiff muſt firſt declare in debt, for an attachment of privilege is in the nature of a ſpecial original.

On declaration by baron and feme, the huſband can't declare by the by at his own ſuit.

If an action be brought by baron and feme, and a declaration be delivered, in that action, the huſband cannot thereupon deliver a declaration by the by at his own ſuit.

Declaration by the by when to be delivered.

A declaration by the by cannot be regularly delivered after the term in which the writ was returnable.

Of delivering the declaration.

When you have drawn the declaration, for your aſſiſtance, wherein you may have recourſe to the following precedents, you ingroſs a copy of it on double penny ſtamped paper, and deliver it to the defendant's attorney, who muſt pay you for the ſame at the rate of 4*d. per* ſheet, (reckoning ſeventy-two words to a ſheet) beſides the king's duty, and eight-pence for filing his warrant of attorney, and then you give a rule for the defendant to plead, with the ſecondary of that prothonotary with whom you enter your proceedings; for this rule you pay 1*s.* 4*d. viz.* 1*s.* for the king's duty, and 4*d.* to the ſecondary for the rule.

Of delivering declaration where defendant's attorney cannot be found.

Where the defendant's attorney, after a diligent inquiry could not be found, it hath been held ſufficient to leave the declaration in the office, and to give notice thereof to the

defendant

defendant himſelf. Where neither the defendant nor his attorney can be found, the court on application will order notice, *&c.* in the office to be good, unleſs the bail, if any, ſhew cauſe to the contrary.

Plea to be demanded in writing.

Before the plaintiff's attorney can ſign judgment, he muſt by note in writing demand a plea of the defendant's attorney, except where the plaintiff has entered an appearance for the defendant.

Plaintiff has till the end of the ſecond term, to deliver his declaration.

Upon proceſs returnable the firſt, or any other return of a term, the plaintiff has time to the end of the next enſuing term to deliver his declaration to the defendant's attorney, or to leave the ſame in the office; and the defendant's attorney (having entered his appearance) may, at the end of the enſuing term, or in four days after, give a rule for the plaintiff to declare, and having demanded a declaration by note in writing of the plaintiff's attorney, may at any time in the vacation of ſuch enſuing term, after the rule for declaring is out, ſign his *Non proſ.* for want of a declaration, and not afterwards; and the plaintiff ſhall not, without leave of the court, have any longer time to declare than as aforeſaid, other than the time limited by the defendant's rule. *Hil.* 9 *Annæ.*

Defendant after ſecond term may give a rule to declare.

Declaration to be demanded in writing.

And for want thereof Non proſ. *to be ſigned.*

Declaration to be demanded of the agent, and not of the country attorney.

On a rule given to declare, a declaration was demanded of the attorney in the country, by his own agreement, but the *Non proſ.* ſigned for want of a declaration was held to be irregular, for the declaration

ſhould have been demanded of the agent in town.

Where no rule the plaintiff has till the eſſoin-day of the 3d term to declare.

Where the defendant at the end of the ſecond term does not give a rule for the plaintiff to declare, the plaintiff has till the eſſoin-day of the third term to deliver his declaration.

Plaintiff has 2 terms to declare after bail complete.

It has been held, that the plaintiff has two terms to declare in, after bail is put in and perfected.

Where the plaintiff appears for the defendant.

Where a copy of a proceſs is ſerved on any defendant, and an appearance is entered for ſuch defendant by the plaintiff's attorney, purſuant to the late act for preventing frivolous and vexatious arreſts, the plaintiff's attorney ſhall leave a copy of the declaration in the office, and give notice thereof to the defendant, by delivering an *Engliſh* notice written in a ſecretary hand to ſuch defendant, or by leaving the ſame at his laſt or moſt uſual place of abode, ſignifying the nature of ſuch action, at whoſe ſuit it is proſecuted, and in whoſe office ſuch declaration is left; and from the time of giving ſuch notice ſuch declaration ſhall be deemed well delivered to ſuch defendant. *Mich.* 1 *Geo.* 2.

Declaration to be left in the office.

And notice left for def. at his laſt place of abode.

Declaration well delivered from time of notice.

And if def. don't plead may ſign judgment without farther calling for a plea.

And in caſe ſuch defendant, after ſuch notice given, ſhall not plead by the time the rule for pleading is out, the plaintiff in ſuch caſe may ſign his judgment (a rule to plead being firſt given) without any other or farther calling for a plea. *Same rule.* *See* Tit. *Inquiry.*

Where the plaintiff appears for the

Where the defendant fails to enter his appearance, and the plaintiff enters it for him,

he may proceed according to the above rule, tho' the defendant may have employed an attorney to appear and plead for him, and have given the plaintiff notice of it, and the plaintiff need not call on such attorney for a plea.

def. he may proceed without taking notice of any attorney the def. may have employed.

On all process returnable the first or second return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the defendant shall plead within four days *after* such declaration delivered without any imparlance, and such declaration may be delivered *de bene esse*. *Mich.* 3 *Geo.* 2.

When the def. shall plead in four days.

When decl. may be delivered de bene esse.

And in case the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant shall plead within eight days *after* the declaration delivered, and in default of pleading as aforesaid, the plaintiff may sign his judgment. *Same rule.*

When the def. has 8 *days time to plead.*

And all declarations in *London* and *Middlesex* delivered pursuant to the above rule, on process returnable the first or second return

Such declarations to be delivered with notice when to plead.

Though by the word *after* in the above rules they seem to exclude the day of the delivery of the declaration, the construction of them must be governed by the rule to plead, which is inclusive of the day on which it is given. And therefore if a declaration be left in the office *de bene esse* on the first day of a term, notice thereof may be given on the same day to plead within the first four days of the term (or first eight days of the term, if the defendant has eight days to plead) and not say within the first four (or eight) days after the declaration delivered.

The four or eight days to plead are inclusive, and the notice may be given accordingly.

of

of any term, where the defendant lives within twenty miles of *London*, ſhall be delivered, with *notice* to plead to ſuch action within four days *after* ſuch declaration delivered; and all declarations where the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, ſhall be delivered with *notice* to plead within eight days *after* ſuch declaration delivered. *Paſch.* 3 *Geo.* 2.

Decl. may be delivered de bene eſſe *before time for bail or appearance expired.*

The plaintiff may deliver a declaration *de bene eſſe* before the time the defendant has to put in bail, or enter a common appearance, is expired, but not afterwards.

Whether declaration de bene eſſe, *and proceeding thereon, will be waiver of exception to bail.*

Held that delivering a declaration, after the time for putting in bail is expired, as a declaration *de bene eſſe*, is no waiver of the exception to bail; but demanding a plea thereupon is a waiver of the exception; it is admitting the defendant to be in court, and in a condition to plead. *Trin.* 16 & 17 *Geo.* 2. *C. B. Liſter* v. *Wainhouſe.*

On declaration de bene eſſe *judgment can't be ſigned till appearance entered.*

In an action which requires only a common appearance, if a declaration be delivered *de bene eſſe*, the plaintiff can't ſign judgment for want of a plea, till the time the defendant had to enter his appearance is expired; as ſuppoſe the *Capias* is returnable *Octab. Hilar.* and a declaration is left in the office *de bene eſſe* on the 23d of *January*, and notice and a rule to plead is given the ſame day, the rule will be out on the 26th, but as the defendant has eight days to appear, excluſive of the return-day, the plaintiff can't ſign judgment for want of a plea, till the

29th

29th of *January*, and then an appearance must be first entered, either by the defendant or the plaintiff for him.

Where a declaration is left in the office *de bene esse*, there should be an indorsement on it, signifying that it is left conditionally, or *de bene esse*. *Indorsement on declaration* de bene esse.

To have a plea the same term the declaration should be delivered four days (exclusive of the day of the delivery) before the end of the term. *Decl. to be delivered 4 days exclusive before the end of the term.*

All declarations and pleadings must be delivered, and all demands thereof, and all notices given, before nine of the clock in the evening. *Mich.* 9 *Geo.* 2.

A copy of a declaration delivered to the defendant, his attorney being known, is a bad delivery of the declaration. *Decl. delivered to def. his attorney being known, is bad.*

If the attorney be not known, the declaration may be left in the office, and notice given to the defendant.

Where a country attorney is concerned for the defendant, the declaration or notice of its being left in the office (as the case shall be) must be given to the agent, and not the country attorney, but where the declaration has been accepted in the country and *Oyer* of the bond demanded and given there, and a plea demanded there, the court has refused to set aside the judgment for want of a plea, the defendant having agreed to this method of proceeding by accepting the declaration, *&c.* in the country. *Must be delivered to the agent, and not to the country attorney.*

The declaration is only well delivered from the time of notice, and therefore if notice of *Declaration is only well delivered from*

the time of notice.

of the declaration be given after the rule to plead is given, it is irregular.

Notice to plead in four days when it ſhould be eight, irregular.

If ſuch defendant has eight days to plead, and the declaration be delivered with notice to plead in four days, it is irregular, though judgment be not ſigned till the eight are expired.

Notice need not ſet forth the whole declaration.

On a motion to ſet aſide judgment, for that the notice of the declaration mentioned, that the declaration was for goods ſold and delivered, and materials found, whereas there was a count in the declaration for money lent, which was not mentioned in the notice. Upon reading the rule of court, which is, that the plaintiff ſhall give notice of the nature of the action, the notice was held to be good; and it was ſaid, that it is not neceſſary to ſet forth the whole declaration. *Turner*, adminiſtrator, v. *Bourns*, *Paſch.* 2 *Geo.* 2.

And it was held, that it is only neceſſary to ſet forth the nature of the action, as in debt or in caſe, without mentioning for what, for that will appear by the declaration itſelf. *Skin.* againſt *Gwinel*, *Paſch.* 5 *Geo.* 2.

But where the notice was a declaration *in an action of treſpaſs on the caſe* without further deſcription, it was held inſufficient; the intent of the rule being that the defendant ſhould know what he was ſued for. Actions in the caſe for contracts, and for torts are widely different: on ſeveral undertakings and promiſes, or at leaſt on promiſe ſhould have been added. *Hil.* 29 *Geo.* 2. *Taylor* againſt *Oxley*.

If

If there be any irregularity in the delivery or notice of the declaration, the defendant must apply to the court two days before the day appointed for executing the writ of inquiry. *Irregularity in delivering declaration to be complained of two days before executing inquiry.*

Precedents of declarations.

Cooke.

Eaſter *Term in the eleventh year of the reign of king* George *the ſecond.*

Middleſex, *to wit,* *P.* *F.* late of *Weſtminſter* in the ſaid county of *Middleſex*, doctor of phyſic, * otherwiſe called *P. F. de paroch. ſancti Martini in Prat. Weſtmonaſterii, Medicinæ Doctor*, was ſummoned to anſwer *J. H.* of a plea, that he render to him ſeventy pounds, which he oweth to him, and unjuſtly detaineth, and ſo forth. And wherefore the ſaid *J.* by *A. B.* his attorney ſaith, that whereas the ſaid *P.* on the nineteenth day of *April* which was in the year of our lord one thouſand ſeven hundred and twenty-ſeven, at *Weſtminſter* aforeſaid in the county of *Middleſex* aforeſaid, by his certain writing obligatory acknowledged himſelf to be bound to the ſaid *J.* in the aforeſaid ſum of ſeventy pounds, to be paid to the ſaid *J.* when he the ſaid *P.* ſhould be *On a bond.*

* As to the *Alias dict. Vide antea fo.* 73, 74.

thereunto

thereunto required: Nevertheleſs the ſaid *P.* although often required, hath not paid the ſaid ſeventy pounds to the ſaid *J.* but hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to him; wherefore the ſaid *J.* ſaith that he is injured, and hath damage to the value of twenty pounds; and thereof he bringeth ſuit, and ſo forth. And he bringeth here into court the aforeſaid writing, which teſtifieth the ſaid debt in form aforeſaid, the date whereof is the day and year above mentioned, and ſo forth.

Borret.

Michaelmas *Term in the twelfth year of king* George *the ſecond.*

On a Mutuatus.

London, *to wit,* *W. S.* late of *London,* eſq; was ſummoned to anſwer *R. F.* gent. of a plea, that he render to him 50*l.* which he oweth him, and unjuſtly detaineth, *&c.* And whereupon the ſaid *R. F.* by *L. R.* his attorney, ſaith, that whereas the ſaid *W. S.* on the day of in the year of our lord one thouſand ſeven hundred and thirty-ſeven, at *London* aforeſaid in the pariſh of St. *Mary Le Bow* in the ward of *Cheap,* borrowed of the ſaid *R. F.* the ſaid 50*l.* to be paid to the ſaid *R. F.* when he the ſaid *W. S.* ſhould be thereunto required; yet the ſaid *W. S.* although often required, hath not yet paid the ſaid 50*l.* to the ſaid *R. F.* but hath hitherto intirely refuſed, and ſtill doth refuſe, to pay him the ſame; wherefore the ſaid *R. F.* ſaith, that he

he is injured, and has damage to the value of 20*l.* and thereof he bringeth ſuit, *&c.*

You ſeldom declare in debt for money borrowed, but where judgment for a debt without bond is confeſſed by virtue of a warrant of attorney, but declare in caſe on an *Indebitatus aſſumpſit.*

Cooke.

Hilary *Term in the twelfth year of the reign of king* George *the ſecond.*

Middleſex, *to wit,* *T. T.* late of *Weſtminſter* in the county of *Middleſex*, dealer in coals, was attached to anſwer *T. D.* in a plea of treſpaſs on the caſe: And whereupon the ſaid *T. D.* by *L. R.* his attorney complaineth, that whereas the ſaid *T. T.* on the firſt day of *January* in the year of our lord one thouſand ſeven hundred and thirty-eight, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, was indebted to the ſaid *T. D.* in the ſum of 100*l.* lawful money of *Great Britain*, for the like ſum of money before that time lent by the ſaid *T. D.* to the ſaid *T. T.* at his ſpecial inſtance and requeſt, and being ſo indebted, he the ſaid *T. T.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T. D.* that he the ſaid *T. T.* would well and truly pay

Indebitatus aſſumpſit *for money lent.*

the ſaid 100*l.* to the ſaid *T. D.* when he the ſaid *T. T.* ſhould be thereunto afterwards requeſted: *Neverthelеſs* the ſaid *T. T.* not at all regarding his ſaid promiſe and undertaking ſo made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *T. D.* in this behalf hath not paid the ſaid ſum of money, or any part thereof, to the ſaid *T. D.* (although to pay the ſame to the ſaid *T. D.* he the ſaid *T. T.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, was requeſted by the ſaid *T. D.*) but the ſaid *T. T.* hath hitherto intirely refuſed, and ſtill doth refuſe, to pay the ſame, to the ſaid *T. D.* to the damage of the ſaid *T. D.* of 120*l.* And thereof he bringeth ſuit, *&c.*

Breach.

Indebitatus aſſumpſit *for money had and received to the plaintiff's uſe.*

As before, to —— For that whereas the ſaid *O. B.* on the day of in the year of his preſent majeſty's reign at the pariſh of in the county of *Middleſex*, was indebted to the ſaid *S. A.* in 30*l.* lawful money of *Great Britain*, for ſo much money by the ſaid *O. B.* before that time had and received to the uſe of the ſaid *S. A.* and being ſo indebted, he the ſaid *O. B.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. A.* that he the ſaid *O. B.* would well and truly pay the ſaid 30*l.* to the ſaid *S. A.* when he the

the ſaid *O. B.* ſhould be thereunto afterwards requeſted: *Neverthelefs*, &c. *as before.*

As before, to —— For that whereas the ſaid *T. M.* on the day of in the year of his preſent majeſty's reign, at the pariſh of in the county of was indebted to the ſaid *C. M.* in 20*l.* lawful money of *Great Britain*, for ſo much money by the ſaid *C.* for the uſe of the ſaid *T.* and at his ſpecial inſtance and requeſt before that time paid, laid out and expended, and being ſo indebted, he the ſaid *T.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then there faithfully promiſed the ſaid *C.* that he the ſaid *T.* would well and truly pay the ſaid 20*l.* to the ſaid *C.* when he the ſaid *T.* ſhould be thereunto afterwards requeſted: *Neverthelefs*, &c.

Indebitatus aſſumpſit *for money laid out.*

Cooke.

Eaſter *Term in the eleventh year of king* George *the ſecond.*

London, *to wit.* *T. M.* late of *London*, merchant, was attached to anſwer *J. S.* in a plea of treſpaſs on the caſe: And whereupon the ſaid *J. S.* by *M. C.* his attorney complaineth, that whereas the ſaid *T. M.* on the 17th day of *May* in the year of our lord 1733. at *London* in the pariſh of St. *Mary Le Bow* in the ward of *Cheap* (he being

On an inland bill of exchange by the drawee againſt the drawer. Lilly's Ent. 44, 55, 90.

ing then a perſon trading, merchandizing, and uſing commerce at *London* aforeſaid) according to the uſage and cuſtom of merchants from the time to the contrary whereof the memory of man is not, made his certain firſt bill of exchange in writing ſubſcribed with his own hand, bearing date the ſame day and year aforeſaid, and directed the ſaid bill of exchange to one *J. H.* (the ſaid *J. H.* then being a perſon trading, merchandizing, and uſing commerce to foreign parts, namely, at) by which ſaid bill of exchange the ſaid *T. M.* required the ſaid *J. H.* twenty-one days after ſight thereof, to pay his ſaid firſt bill of exchange to the ſaid *J. S.* (by the name of *J. S.* merchant at *London*) or order, 112*l.* 5*s.* value of him, with or without advice from the ſaid *T. M. which* ſaid bill of exchange afterwards, that is to ſay, on the 15th day of *May* in the year of our lord aforeſaid, at aforeſaid, was ſhewn to the ſaid *J. H.* for his acceptance thereof, and the ſaid *J. H.* did not accept the ſaid bill, but then and there refuſed to accept the ſame, of which the ſaid *T. M.* afterwards, that is to ſay, on the fifteenth day of *June* in the year of our lord laſt mentioned, at *London* aforeſaid in the pariſh and ward aforeſaid, had notice, and by reaſon of the premiſſes, and alſo according to the uſage and cuſtom of merchants, he the ſaid *T. M.* was and became liable to pay unto the ſaid *J. S.* the ſaid ſum of 112*l.* 5*s.* in the ſaid bill of exchange mentioned; and being ſo liable, he the

Bill not accepted.

he ſaid *T. M.* afterwards, that is to ſay, on the ame day and year laſt mentioned, at *London* foreſaid in the pariſh and ward aforeſaid, ndertook, and to the ſaid *J. S.* then and here faithfully promiſed, that he the ſaid *M.* would well and faithfully pay and ſaisfy to the ſaid *J. S.* the ſaid 112*l.* 5*s.* in he ſaid bill of exchange mentioned: *Neerthelefs*, &c.

It is uſual and neceſſary to lay diverſe ounts in one declaration, where the plainff hath various demands againſt the defenant, as on a promiſſory note, for goods old, money lent, *&c.* and even where he ath but one demand; as, ſuppoſe for goods old and delivered, it will be proper to lay wo counts, as an *Indebitatus aſſumpſit*, and a *Quantum valebant*, whereupon if he fails of roving the price agreed on, he may prevail on the *Quantum valebant* upon proving he delivery of the goods, and the value of hem at that time; and as to the promiſe in uch caſes there is no occaſion to prove it; he law implies it upon proof of the debt.

Borret.

Hilary *Term in the eleventh year of the reign of* George *the ſecond.*

Middleſex, *to wit*, } *R.* G. late of the pariſh of St. *Andrew, Holborn*, in the county of *Middleſex*, druggiſt, was attached *On a promiſſory note.*

to anſwer *S. N.* of a plea of treſpaſs on the caſe: And whereupon the ſaid *S. N.* by *L. R.* his attorney complaineth, that whereas the ſaid *R. G.* on the tenth day of *December* in the eleventh year of his preſent majeſty's reign, at *Weſtminſter* in the county of *Middleſex*, made his note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year, by which ſaid note the ſaid *R. G.* promiſed to pay to the ſaid *S. N.* or his order, *ten days after* the date of the ſaid note, the ſum of fifty pounds, *for value received by* him the ſaid *R. G.* By reaſon whereof, and alſo by force of the ſtatute in ſuch caſes made and provided, the ſaid *R. G.* became liable to pay to the ſaid *S. N.* the ſaid ſum of 50*l.* in the ſaid note mentioned, according to the tenor and effect of the ſaid note; and being ſo liable, he the ſaid *R. G.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay to the ſaid *S. N.* the ſaid 50*l.* in the ſaid note mentioned, according to the tenor and effect of the ſaid note. *And whereas alſo* the ſaid *R. G.* afterwards, that is to ſay, on the firſt of *January* in the year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was indebted to the ſaid *S. N.* in 100*l.* of lawful money of *Great Britain*, for diverſe goods, wares and merchandizes, by the ſaid *S. N.* before that time ſold and delivered

Indebitatus aſſumpſit *for goods ſold and delivered.*

livered to the ſaid *R. G.* at his ſpecial inſtance and requeſt; and being ſo indebted, he the ſaid *R. G.* in conſideration thereof, afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay the ſaid 100*l.* to the ſaid *S. N.* when he the ſaid *R. G.* ſhould be thereunto requeſted. *And whereas alſo* afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, in conſideration that the ſaid *S. N.* had before that time ſold and delivered to the ſaid *R. G.* at his like ſpecial inſtance and requeſt, diverſe other goods, wares and merchandizes, he the ſaid *R. G.* undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would, when he ſhould be thereunto requeſted, well and truly pay to the ſaid *S. N.* ſo much money as the goods, wares and merchandizes laſt above mentioned were at the time of the ſale and delivery thereof reaſonably worth. And the ſaid *S. N.* in fact ſaith, that the goods, wares and merchandizes laſt above mentioned were, at the time of the ſale and delivery thereof, reaſonably worth other 100*l.* of like lawful money of *Great Britain*, that is to ſay, at *Weſtminſter* aforeſaid in the county aforeſaid, whereof the ſaid *R. G.* afterwards, that is to ſay, on the ſame day and year laſt above mentioned, there had notice. *And whereas alſo* the ſaid *R. G.*

Quantum valebant *thereon.*

Inſimul computaſſet.

R. G. afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, accounted together with the ſaid *S. N.* concerning diverſe other ſums of money before that time due, and unpaid by the ſaid *R. G.* to the ſaid *S. N.* and the ſaid *R. G.* was upon the ſaid account then and there found in arrear to the ſaid *S. N.* in 76*l.* 12*s.* 6*d.* of like lawful money of *Great Britain*; and the ſaid *R. G.* being ſo found in arrear, in conſideration thereof afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay the ſaid 76*l.* 12*s.* 6*d.* to the ſaid *S. N.* when he the ſaid *R. G.* ſhould be thereunto requeſted; *Neverthelefs* the ſaid *R. G.* not at all regarding his ſaid ſeveral promiſes and undertakings ſo made aforeſaid in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *S. N.* in this behalf, hath not paid to the ſaid *S. N.* the ſaid ſeveral ſums of money, or any of them, or any part thereof, (although to pay the ſame to the ſaid *S. N.* he the ſaid *R. G.* afterwards, that is to ſay, on the ſame day and year laſt above mentioned at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted by the ſaid *S. N.*) but the ſaid *R. G.* hath hitherto intirely refuſed, and ſtill doth refuſe, to pay the ſame to the ſaid *S. N.* to the damage of the

Breach.

the ſaid *S. N.* of 200 *l.* and thereof he bringeth ſuit, *&c.*

It is ſaid, that in an *Inſimul computaſſet* the plaintiff muſt in his declaration, lay the very day of the account, and the ſum agreed upon by both parties to be due.

Thomſon.

Hilary *Term in the twelfth year of the reign of king* George *the ſecond.*

Middleſex, *to wit,* L. *K.* late of *Weſtminſter* in the county of *Middleſex*, widow, was attached to anſwer *J. B.* eſq; of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* by *S. H.* his attorney complaineth, that *whereas* the ſaid *L.* on the firſt day of *January* in the year of our lord one thouſand ſeven hundred and thirty-eight, at *Weſtminſter* aforeſaid, was indebted to the ſaid *J.* in the ſum of eight pounds and fifteen ſhillings of lawful money of *Great Britain*, for the uſe, occupation and enjoyment of one meſuage, with the appurtenances, of the ſaid *J.* ſituate, ſtanding and being in *Weſtminſter* aforeſaid, for a long ſpace of time then paſt, that is to ſay, for the ſpace of one quarter of a year then paſt, by the ſaid *L.* by the permiſſion of the ſaid *J.* and by, from and under the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *L.* had and enjoyed, and being ſo indebted, ſhe the ſaid *L.* in conſideration thereof,

Indebitatus aſſumpſit *for the uſe and occupation of a houſe.*

of, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook, and to the ſaid *J.* then and there faithfully promiſed to pay to him the ſaid ſum of money, when ſhe the ſaid *L.* ſhould be thereunto afterwards required: *And whereas alſo* the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *L.* had permitted and ſuffered the ſaid *L.* to have, occupy, poſſeſs and enjoy a certain other meſuage, with the appurtenances, of the ſaid *J.* ſituate, ſtanding and being in *Weſtminſter* aforeſaid, for a long ſpace of time then paſt, that is to ſay, for the ſpace of one quarter of a year then paſt, undertook, and to the ſaid *J.* then and there faithfully promiſed to pay to him ſo much money as he had reaſonably deſerved to have from the ſaid *L.* for the ſame; and the ſaid *J.* in fact ſaith, that he had reaſonably deſerved to have from the ſaid *L.* for the ſame another ſum of eight pounds and fifteen ſhillings of like lawful money; that is to ſay, at *Weſtminſter* aforeſaid, whereof the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid at *Weſtminſter* aforeſaid had notice: *And whereas alſo* the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid at *Weſtminſter* aforeſaid, was indebted to the ſaid *J.* in the further ſum of ten pounds of like lawful money, for the like ſum of money by the ſaid *J.* before that time, at the ſpecial inſtance and requeſt

Quantum meruit *thereon.*

Indebitatus aſſumpſit *for money laid*

requeſt of the ſaid *L.* and to the uſe of the ſaid *L.* paid, laid out and expended; and being ſo indebted, ſhe the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *J.* that ſhe would well and truly content and pay him the ſaid ten pounds laſt mentioned, whenever afterwards ſhe the ſaid *L.* ſhould be thereto required: *Neverthelefs* the ſaid *L.* not regarding her ſaid ſeveral promiſes and undertakings ſo made as aforeſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *J.* in this behalf, hath not paid to him the ſaid ſeveral ſums of money, or any of them, or any part thereof, although to pay the ſame to him the ſaid *J.* ſhe the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, was requeſted by the ſaid *J.* but the ſaid *L.* to pay the ſame to him, hath hitherto refuſed, and doth yet refuſe, to the damage of the ſaid *J.* of ten pounds; And thereof he bringeth ſuit, &c. *Breach.*

Cooke.

Eaſter *term in the eleventh year of the reign of king* George *the ſecond.*

London, *W. H.* late of *London*, woollen-draper, was attached to anſwer *J. B.* of a plea of treſpaſs on the caſe; and *Indeb. aſſ. for work done and materials found.*

and whereupon the ſaid *J. B.* by *J. W.* his attorney complaineth, that whereas the ſaid *W. H.* on the twenty-firſt day of *February* in the eleventh year of his preſent majeſty's reign, at *London* in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, was indebted to the ſaid *J. B.* in 30 *l.* of lawful money of *Great Britain*, as well for work before that time done and performed by the ſaid *J. B.* for the ſaid *W. H.* at his ſpecial inſtance and requeſt, as for diverſe materials and neceſſary things uſed in and about the ſaid work before that time found and provided by the ſaid *J. B.* at the like ſpecial inſtance and requeſt of the ſaid *W. H.* And the ſaid *W. H.* being ſo indebted, in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. B.* that he the ſaid *W. H.* would well and truly pay the ſaid 30 *l.* to the ſaid *J. B.* when he the ſaid *W. H.* ſhould be thereunto required:

Quantum meruit *thereon.*

And whereas alſo afterwards, that is to ſay, on the ſame day and year aforeſaid, at *London* in the pariſh and ward aforeſaid, in conſideration that the ſaid *J. B.* had before that time done and performed other work for the ſaid *W. H.* at his like ſpecial inſtance and requeſt, and had found and provided, at the like ſpecial inſtance and requeſt of the ſaid *W. H.* diverſe other materials and neceſſary things uſed in and about the ſaid laſt mentioned work, he the ſaid *W. H.* undertook, and then and there faithfully promiſed the

ſaid

ſaid *J. B.* that he the ſaid *W. H.* would, when he ſhould be thereunto required, well and truly pay to the ſaid *J. B.* ſo much money as he therefore reaſonably deſerved to have: And the ſaid *J. B.* in fact ſaith, that he did therefore reaſonably deſerve to have of the ſaid *W. H.* other 30*l.* of like lawful money of *Great Britain*, that is to ſay, at *London* aforeſaid in the pariſh and ward aforeſaid, whereof the ſaid *W. H.* afterwards, that is to ſay, on the ſame day and year aforeſaid, there had notice: *Nevertheleſs*, &c.

Borrett.

Hilary *term in the ſixth year of the reign of king* George *the ſecond.*

Southampton, to wit, *J. S.* late of *Croudall* in the ſaid county of *Southampton*, yeoman, was attached to anſwer *R. D.* in a plea of treſpaſs on the caſe, and whereupon the ſaid *R. D.* by *J. L.* his attorney complaineth, That whereas the ſaid *R. D.* on the firſt day of *October* in the ſixth year of his preſent majeſty's reign, was ſeiſed, and is ſtill ſeiſed in his demeſne as of fee, of and in one cloſe called the kitchen-garden, ſituate, lying and being in *Croudall* aforeſaid in the ſaid county of *Southampton*, to which ſaid cloſe called the kitchen-garden, another cloſe in the poſſeſſion, tenure or occupation of the ſaid *J. S.* called the hop-garden, at *Croudall* aforeſaid in the ſaid county of *Southampton*, lieth

For not repairing fences.

lieth next and contiguous adjoineth, between which ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, and the ſaid cloſe in the tenure or occupation of the ſaid *J. S.* called the hop-garden, there now is, and time out of mind hath been, certain pales or fences, which part and divide the ſaid cloſes the one from the other. *And whereas* the ſaid *J. S.* and all occupiers and poſſeſſors of the ſaid cloſe called the hop-garden, for the time being, time out of mind were uſed and accuſtomed and ought to make, repair and amend the ſaid pales, and fences between the ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, and the ſaid cloſe of the ſaid *J. S.* called the hop-garden, with all neceſſary reparations and amendments, as often as need ſhould be or require, leaſt any cattle out of the ſaid cloſe called the hop-garden into the ſaid cloſe called the kitchen-garden ſhould eſcape and enter, and do damage there: *Nevertheleſs* the ſaid *J. S.* not ignorant of the premiſes, but contriving and fraudulently intending the ſaid *R. D.* in this behalf unjuſtly to damnify, and to deprive him of the whole benefit, profit and advantage of the ſaid cloſe called the kitchen-garden, afterwards, *to wit*, on the ſaid firſt day of *October* in the ſaid ſixth year of his preſent majeſty's reign, and from thence to the firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, the pales and fences ſeparating and dividing the ſaid cloſe called the kitchen-garden and the ſaid cloſe called the hop-garden one from the other as aforeſaid,

ſaid, permitted to remain and continue ruinous, broken, and in decay for want of repairing the ſame; by means whereof the cattle, hogs and ſheep of the ſaid *J. S.* and of diverſe other perſons to the ſaid *R. D.* unknown, on the ſaid firſt day of *October*, and on ſeveral days and times between the ſaid firſt day of *October* and the ſaid firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, out of the ſaid cloſe of the ſaid *J. S.* called the hop-garden, into the ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, broke and entered, and the graſs, corn, barley, beans, peaſe, turnips, carrots and cabbages, there then lately growing and being, to the value of nine pounds and nineteen ſhillings, eat, trod down, and conſumed; by means whereof the ſaid *R. D.* the whole benefit, profit, and advantage of his ſaid cloſe called the kitchen-garden, for all that time, *to wit*, from the ſaid firſt day of *October* in the ſaid ſixth year of his ſaid preſent majeſty's reign to the ſaid firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, wholly loſt and was deprived of; whereupon the ſaid *R. D.* ſaith, that he is wronged, and hath damage to the value of nine pounds and nineteen ſhillings; And thereof he bringeth ſuit, *&c.*

Southampton, *T. W.* late of *Chriſt-Church* in the county of *Southampton*, gentleman, was attached to anſwer *J. P.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *J. P.* at *L.* in the

Treſpaſs. Breaking plaintiff's cloſe, &c. Andrews's Rep. 21, 284.

the county aforeſaid, and his graſs and herbs to the value of 20*l.* there lately growing, with certain cattle grazed, trampled on and conſumed, and did him other injuries, to the great damage of the ſaid *J. P.* and againſt the peace of our lord the preſent king; and whereupon the ſaid *J. P.* by *J. G.* his attorney complaineth, that the ſaid *T. W.* on the firſt day of *June* in the eleventh year of his preſent majeſty's reign, with force and arms, *&c.* broke the cloſe of the ſaid *J. P.* at *L.* in the county aforeſaid, and the graſs, corn, barley, beans, peaſe, turnips, carrots and cabbages, to the value of 10*l.* there then lately growing, with certain cattle, that is to ſay, with horſes, oxen, cows, hogs and ſheep, grazed, trampled on and conſumed, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* and whereupon the ſaid *J. P.* ſaith that he is injured, and hath damage to the value of twenty pounds; And thereof he bringeth ſuit, *&c.*

Cooke.

Michaelmas *term in the eleventh year of king* George *the ſecond.*

Aſſault. Middleſex, *J. M.* late of, *&c.* was attached *to wit,* *J.* to anſwer *J. H.* of a plea, wherefore with force and arms he aſſaulted the ſaid *J. H.* at *Weſtminſter* in the county of *Middleſex*, and beat, wounded and ill-treated him, ſo that his life was deſpaired of, and other injuries did to him, to the great damage of the ſaid *J. H.* and againſt the peace of

of our lord the preſent king, *&c.* And whereupon the ſaid *J. H.* by *J. C.* his attorney, complaineth, that the ſaid *J. M.* on the day of in the year of his preſent majeſty's reign, with force of arms, that is to ſay, with ſwords, ſtaves and knives, aſſaulted the ſaid *J. H.* at *Weſtminſter* in the county of *Middleſex*, and beat, wounded, and treated him ill, ſo that his life was deſpaired of; and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* wherefore the ſaid *J. H.* ſaith, that he is injured, and hath damage to the value of 50*l.* And thereof he bringeth ſuit, *&c.*

Surry, *to wit*, *J. T.* late of, *&c.* brewer, was attached to anſwer *W. B.* of a plea of treſpaſs on the caſe; and whereupon the ſaid *W. B.* by *L. R.* his attorney complaineth, that whereas the ſaid *W. B.* on the tenth day of *December* in the fourteenth year of his preſent majeſty's reign, at *Kingſton* in the county of *Surry*, was poſſeſſed of the following goods and chattels, that is to ſay [*here inſert the goods*] to the value of one hundred pounds, as of his own proper goods and chattels; and being ſo thereof poſſeſſed the ſaid *W. B.* caſually loſt the ſaid goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, *to wit*, on the ſaid tenth day of *December* in the fourteenth year aforeſaid, at *Kingſton* aforeſaid in the county aforeſaid, came by finding to the hands and poſſeſſion of the ſaid *J. T.* Nevertheleſs *Trover.*

theleſs the ſaid *J. T.* knowing the ſaid goods and chattels to be the goods and chattels of the ſaid *W. B.* and to him of right to belong and appertain, yet contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W. B.* of the ſaid goods and chattels, hath not delivered the ſaid goods and chattels to the ſaid *W. B.* (although often required) but afterwards, that is to ſay, on the tenth day of *January* in the fourteenth year aforeſaid, at *Kingſton* aforeſaid in the county aforeſaid, converted the ſaid goods and chattels to his own proper uſe, to the damage of the ſaid *W. B.* of 200*l.* And thereof he bringeth ſuit, *&c.*

See further precedents among the pleadings at the end of the book, *&c.*

Money, &c. brought into court.

THE intent and conſequence of bringing money into court, will appear by the following rule.

Cooke.

Michaelmas *term in the twenty-fourth year of king* George *the ſecond.*

Rule for paying money into court.

S. Againſt *R. Wedneſday* the 28th of *November.* It is ordered, That the defendant ſhall pay to the plaintiff, or to his attorney, ten pounds, together with coſts to be taxed by Mr. prothonotary *Cooke*, if the plaintiff

plaintiff will accept thereof, and that thereupon all further proceedings in this action ſhall be ſtayed; but if the plaintiff will not accept thereof, the defendant ſhall immediately bring the ſaid ten pounds into this court, and plead the general iſſue; and if upon the trial of the iſſue between the ſaid parties the plaintiff ſhall become nonſuit, or the jury ſhall not aſſeſs damages to the plaintiff exceeding the ſaid ten pounds, then the plaintiff ſhall have no coſts, but ſhall pay to the defendant or to his attorney, coſts to be taxed by the ſaid prothonotary; which coſts ſhall be paid out of the money ſo brought into court, if ſufficient for that purpoſe, and the reſidue, if any, ſhall be paid to the plaintiff. But if the money ſo paid into court be not ſufficient to pay the ſaid coſts, the deficiency ſhall be made good by the plaintiff. But if upon the trial of the ſaid iſſue the jury ſhall aſſeſs damages to the plaintiff exceeding the ſaid ten pounds, then judgment ſhall be entered for the plaintiff upon the verdict with coſts, and the plaintiff ſhall have the ſaid ten pounds out of court towards ſatisfaction of ſuch judgment, and may take out execution for the reſidue.

Entred on the motion of ſerjeant *Agar* for the defendant.

By the court.

Fothergill.

Where the plaintiff is an executor or adminiſtrator, money may not be brought into court; but as the reaſon given is, that an executor

Money not to be brought into court where the plaintiff is

an executor or adminiſtrator. executor or adminiſtrator is not by law to pay coſts, *Quære* therefore, Whether money may not be brought into court, if the action brought by the executor or adminiſtrator be ſuch an action as he might have brought in his own right, and in which he need not have named himſelf executor or adminiſtrator; for in ſuch an action he will be liable to pay coſts on a nonſuit, or the like.

May in debt for rent. In debt for rent money may be brought into court.

In replevin. In replevin and avowry for rent the plaintiff was allowed to bring money into court.

In covenant, money brought in on one breach only, viz. *for non-payment of rent.* In covenant and breach for non-payment of rent, and for not repairing, *&c.* it was moved to bring in ſo much for the rent, and that as to the other breach the plaintiff might proceed as he thought fit; and allowed. *Salk.* 597.

In covenant, for a ſum certain. In covenant, in which the breach was aſſigned in a ſum certain *viz.* 11 *l.* for not dreſſing corn, leave was given to bring in the 11 *l.* upon the common rule. *Hil.* 15 *Geo.* 2. *C. B. Walnouth* v. *Houghton.*

In debt on a bond denied. In debt on a bond, conditioned for good behaviour and paying money, motion for leave to bring in the money and plead performance to the reſt of the condition denied. *Hil.* 18 *Geo.* 2. *C. B. Atkins* v. *Taylor.*

And in debt on a charter-party. In debt for the penalty of a charter-party, motion to bring in the money denied. *Paſ.* 19 *Geo.* 2. *C. B. Yeoman* v. *Roſs.*

And in debt on a bond for performance of covenants and In debt on a bond conditioned for the performance of covenants in a leaſe, and breach aſſigned for non-payment of 10 *l.* for half

half a year's rent, the like motion denied. *Hil.* 22 *Geo.* 2. *C. B. Wright* v. *Benington.* *breach in a ſum certain.*

In trover, goods not being ponderous have been allowed to be brought into court; this is diſcretionary in the court, and where they have been ponderous, the plaintiff has been ordered to ſhew cauſe why he ſhould not accept them. *Trover.*

The court will not give the defendant liberty to bring money into court on ſome of the counts in the declaration, and demur to the reſt; for the reaſon of making the rule for bringing money into court, is to prevent vexation, and make an end of the cauſe. *Defendant ſhall not bring money in to part, and demur to the reſt of the declaration.*

But the court gave leave to bring 5*l.* 5*s.* into court upon the common rule, with reſpect to the 7th and 8th counts, there being 9 counts in the declaration, and as to the reſt to plead the general iſſue, the ſtatute of limitations and a ſet off. *Trin.* 21 and 22 *Geo.* 2. *C. B. Hellier* v. *Hallet*, adminiſtratrix —— Leave to plead bankruptcy to the count, and to bring in money on the common rule, and plead the general iſſue to the other counts. *Paſ.* 16 *Geo.* 2. *C. B. Hall* v. *Lane.* *But leave to bring in money as to ſome counts, and plead ſeveral pleas to the reſt.*

Leave granted to bring money in on the common rule, and plead *plene adminiſtravit*, and the general iſſue to the whole. *Hil.* 23 *Geo.* 2. *C. B. Auſtin* v. *Roſs*, executor. *To bring in money, and plead* plene adminiſtravit, *and the general iſſue to the whole.*

It has been ſaid the defendant may be admitted to bring money into court after the rule to plead is out, but not after he has *When money may be brought into court.*

pleaded, without the plaintiff's consent. But *Hil.* 29 *Geo.* 2. between *Philips* and *Barker*, leave was given to withdraw the general issue, to bring 42*s.* into court, and plead the same again on taking notice of trial for sitting after term, no delay having been occasioned by the defendant's having omitted to bring the money in before plea pleaded.

Nor after a regular judgment set aside.

If a regular judgment be set aside on payment of costs, pleading an issuable plea, &c. the defendant shall not have leave to bring money into court.

Tho' plaintiff nonsuited, defendant cannot have the money back.

The defendant had brought money into court on the common rule; the plaintiff would not accept the money, but proceeded to trial, and upon the trial was nonsuited; and the defendant moved in the treasury, that in regard the plaintiff was out of court by the nonsuit, he might have the money back, and produced the *Postea.* The judges on consideration were of opinion, that the defendant by bringing the money into court had admitted the plaintiff to be intitled to it at all events, and that therefore the defendant could not have the money back again: Afterwards the plaintiff brought a new action, and the court made a rule, that the plaintiff might have the money if he thought fit; but if not, that it should remain in court on the common rule in the new action. *Lane* v. *Wilkinson*, *Mich.* 1 *Geo.* 1.

On a new action leave for plaintiff to have the money, or let it lie on the common rule.

The like, and leave to bring in more money

The like resolution, and leave for the defendant to bring in more money on a new action

action being brought. *Dickenſon* v. *Tallowin*, *Trin.* 3 *Geo.* 2. *But ſee the rule antea fo.* *on the new action.*

Where the plaintiff has refuſed the money and proceeded, the court has admitted him to take the money out of court on paying the defendant his coſts ſubſequent to the bringing the money into court. *Plaintiff admitted to take the money, tho' had refuſed it, and proceeded.*

The judgment was arreſted, and conſequently no coſts payable on either ſide; the court ordered 20 *l.* brought into court by the defendant to be paid to the plaintiff. *Paſ.* 16 *Geo.* 2. *C. B. Fiſher* v. *Kitchingman.* *If judgment arreſted, money to be paid to plaintiff.*

On the common rule 37 *l.* being paid into court, the plaintiff proceeded to trial and recovered a greater ſum, and afterwards became a bankrupt, the aſſignees moved to have the 37 *l.* paid to them; but the plaintiff's attorney inſiſting, that as he had been the means of obtaining the verdict, he ought to be firſt paid his bill of coſts, it was order'd that his bill ſhould be taxed, and that what was due to him ſhould be paid out of the 37 *l.* and the reſidue to the aſſignees. *Trin.* 27, 28 *Geo.* 2. *C. B. Owſton* v. *Obrian.* *Plaintiff's attorney paid his bill out of money brought into court.*

5 *l.* or under may be brought in on a motion in the treaſury. *What ſum on a treaſury motion.*

As to laying of actions, and changing the Venue.

ALL real and mixed actions, as waſte, *Ejectione firmæ*, *&c.* are local, and muſt be laid in the county where the land lies; and actions of treſpaſs *Quare clauſum* *Local actions.*

fregit muſt be laid in the county where the wrong was done.

Tranſitory actions.

Actions of debt, detinue, aſſault, annuity, account, &c. are tranſitory, and may be laid in any county where the plaintiff pleaſeth.

Caſe, treſpaſs, aſſault or impriſonment, to be laid in their proper counties, unleſs, &c.

But by a rule of this court, actions upon the caſe, treſpaſs for goods, aſſault or impriſonment, ariſing in any *Engliſh* county, are to be laid in their proper counties, unleſs they ariſe where the juſtices of *Niſi prius* ſeldom come. And becauſe treſpaſs or trover for goods, battery, impriſonment and ſlander muſt needs be notorious in what county they ariſe, the attorney knowingly laying them out of their proper county (unleſs in the caſes before expreſſed, or ſuch other cauſe as ſhall be allowed by a judge of the court) ſhall be ſeverely puniſhed. *Mich.* 1654.

Attornies laying actions of treſpaſs, &c. in foreign counties, unleſs, &c. to be ſeverely puniſhed.

Venue *may be changed before plea, on motion and affidavit.*

In a tranſitory action *before the defendant has pleaded*, on motion and affidavit made, (That the plaintiff's cauſe of action (if any) aroſe in the county of *A.* and not in the county of *B.* as laid in the declaration, or elſewhere out of the county of *A.*) the court will change the *Venue* to the proper county; and the defendant muſt plead to the new action as he ſhould have done to the former without delay; and the *Venue* may be changed in this manner tho' the defendant comes in on the exigent. *Same rule.*

Defendant to plead as before.

Venue *may be changed tho' the defendant comes in on the exigent.*

Venue *can't be changed before appearance.*

The defendant cannot move to change *Venue* in any action, until his appearance be entred. *Paſ.* 24 *Car.* 2.

Any

Any defendant may move to change the *Venue* at any time before plea pleaded, in all ſuch actions where the *Venue* may be changed by the courſe of this court, notwithſtanding ſuch defendant may have applied for and obtained further time to plead before ſuch motion made. *Mich.* 16 *Geo.* 2.

May move to change the Venue *at any time before plea.*

The defendants having put in their plea, after a rule for ſhewing cauſe why the *Venue* ſhould not be changed, and before it was made abſolute; the court held, that the putting in the plea by inadvertency was no waiver of the rule, and gave the defendants leave to withdraw their plea on payment of coſts, and made the rule for changing the *Venue* abſolute. *Trin.* 24 and 25 *Geo.* 2. *C. B. Herbert* v. *Flower et al.* in trover.

Where a plea ſhall be no waiver of a rule Niſi *for changing the* Venue.

Rules *Niſi* for changing the *Venue* from *London* into *Eſſex* were diſcharged; the defendant on obtaining a judge's order for time to plead having conſented to rejoin *gratis*, and to take notice for trial at the ſitting after term in *London*; for though an order for time to plead is generally no reaſon againſt changing the *Venue*, yet if the defendant's attorney will conſent to take notice of trial in the county where the action is laid, that conſent ſhall bind him; if the judge had known the defendant's intention of moving to change the *Venue*, he would have made his order without prejudice to ſuch motion. *Trin.* 28 *Geo.* 2. *Hunter* againſt *Gray*, and *Smith* againſt *Gray*.

Action on the caſe on a cuſtom of the borough of *Leiceſter*, for exerciſing the trade of

Venue *changed on reading declaration*

Without the usual affidavit.

of a watch-maker there, not being a freeman. The *Venue* was changed from *London* to *Leicesterſhire*, without the uſual affidavits. *Note*; there is a commiſſion of gaol-delivery every aſſiſes for this borough, but no commiſſion of *Niſi prius*. *Trin.* 19 & 20 *Geo.* 2. *C. B.* Mayor, *&c.* of *Leiceſter* v. *Green*.

Not to be moved the laſt day of term.

If it be moved the laſt day of the term, the court will not make a rule; for the plaintiff has no time to ſhew cauſe.

Unleſs, &c.

But if the declaration be delivered ſo late, that the plaintiff cannot move before the laſt day of term, he may move it then.

The Venue *not to be changed from a county to a city.*

The *Venue* may not be changed from a county at large to a city and county, as from the county of *Middleſex* to the county of the city of *York*.

Except London.

But the *Venue* has been changed from a county at large into *London*.

But may from one city and county to another.

It may be changed from one city and county to another city and county, as from the city of *Norwich* to the city of *London*.

Not to be changed into a county palatine.

The court will not change the *Venue* into a county palatine, as from *Middleſex* to *Lancaſhire*.

Of changing the Venue *into cities and counties where aſſizes are ſeldom held, or but once a year.*

The *Venue* cannot be changed into *Hull*, *Canterbury*, *&c.* becauſe it is not known when an aſſiſe will be held there; nor into the city of *Worceſter* or *Glouceſter*, out of the county at large, becauſe the aſſiſes for the city and the county at large are held at the ſame place. In *Eaſter* or *Trinity* term, the *Venue* may be changed into a city or county where the aſſiſes are held but once a year,

year, as *Briſtol*, *Cumberland*, *&c.* In *Michaelmas* and *Hilary* term there is no certain rule, but the court ſhould change the *Venue* then, if it can be done without manifeſt inconvenience.

Nor in an action of Scandalum magnatum, *or on a bond or promiſſory note.*

The court will not change the *Venue* in an action of *Scandalum magnatum*, nor where the plaintiff ſues on a bond, or other ſpecialty, nor on a bill of exchange or promiſſory note.

But where there is a declaration on a note with other counts, as for goods ſold and delivered, *&c.* the court will change the *Venue*, unleſs the plaintiff will undertake, at the peril of a nonſuit, to give evidence on the promiſſory note.

If a ſerjeant or attorney ſues by Capias, *the* Venue *may be changed.*

If a ſerjeant at law, or an attorney be plaintiff, and ſues by *Capias*, and not by writ of privilege, the *Venue* may be changed, for he has thereby waived his privilege, and is to be conſidered only as a common perſon.

An attorney defendant not intitled to have the Venue *changed.*

If an attorney be defendant, his privilege alone is not a ſufficient cauſe to change the *Venue*.

Pleas.

Pleas,

IF the defendant anſwers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two ſorts, general and ſpecial.

General,

A general plea, commonly called the general iſſue, is a conciſe direct anſwer to the declaration;

Special. A ſpecial plea contains ſome particular matter, either by way of excuſe, juſtification, or the like.

General iſſues.

Non eſt factum *to a debt on a bond.* And the ſaid *P.* by *L. R.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing, becauſe he ſaith, that that writing is not his deed; and of this he putteth himſelf upon the country.

Non eſt factum *to a bill or indenture.* The ſame as before, only inſtead of the word *writing*, ſay *bill.* The like of an indenture, *mutatis mutandis.*

Non eſt factum teſtatoris. 10 Co. 120. And the ſaid *J. P.* by *T. B.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing, becauſe he ſaith, that the ſaid writing is not the deed of the ſaid *W. P.* and of this he putteth himſelf upon the country.

Nil debet. And the ſaid *R.* by *M. S.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he doth not owe to the ſaid *H.* the ſaid 100*l.* or any part thereof, in manner and form as the ſaid *H.* hath above declared againſt him; and of this he putteth himſelf upon the country.

Nil debet *in debt* qui tam. Lilly's Entries 223. And the ſaid *H.* by *J. B.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he the ſaid *H.* doth not owe to our ſaid lord the king, and

to

to the ſaid *J. B.* who as well, *&c.* the ſaid 400*l.* or any part thereof, in manner and form as the ſaid *J.* who as well, *&c.* hath above declared againſt him; and of this he putteth himſelf upon the country.

And the ſaid *C. D.* by *E. F.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he doth not detain from the ſaid *A. B.* the ſaid thirty pounds nor any part thereof, in manner and form as the ſaid *A. B.* above complaineth againſt him; and of this he putteth himſelf upon the country.

Non detinet *in debt.* Brownl. 170. Lilly's Entries 215.

And the ſaid *G.* by *K. P.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he did not undertake in manner and form as the ſaid *G.* above complaineth againſt him; and of this he putteth himſelf upon the country.

Non aſſumpſit.

And the ſaid *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and injury, when, *&c.* and ſay, that the ſaid *J. W.* [*the teſtator*] in his life-time did not undertake in manner and form as the ſaid *R.* above complaineth againſt them; and of this they put themſelves upon the country.

Non aſſumpſit *by executors.*

And the ſaid *T. W.* by *J. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he is not guilty of the premiſſes above laid to his charge, as the ſaid *H.* above complaineth againſt him; and of this he putteth himſelf upon the country.

Not guilty in caſe.

And

Special. A ſpecial plea contains ſome particular matter, either by way of excuſe, juſtification, or the like.

General iſſues.

Non eſt factum *to a debt on a bond.* And the ſaid *P.* by *L. R.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing, becauſe he ſaith, that that writing is not his deed; and of this he putteth himſelf upon the country.

Non eſt factum *to a bill or indenture.* The ſame as before, only inſtead of the word *writing*, ſay *bill*. The like of an indenture, *mutatis mutandis*.

Non eſt factum teſtatoris. 10 Co. 130. And the ſaid *J. P.* by *T. B.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing, becauſe he ſaith, that the ſaid writing is not the deed of the ſaid *W. P.* and of this he putteth himſelf upon the country.

Nil debet. And the ſaid *R.* by *M. S.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he doth not owe to the ſaid *H.* the ſaid 100*l.* or any part thereof, in manner and form as the ſaid *H.* hath above declared againſt him; and of this he putteth himſelf upon the country.

Nil debet *in debt* **qui tam.** Lilly's Entries 223. And the ſaid *H.* by *J. B.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he the ſaid *H.* doth not owe to our ſaid lord the king, and

to

to the ſaid *J. B.* who as well, *&c.* the ſaid 400*l.* or any part thereof, in manner and form as the ſaid *J.* who as well, *&c.* hath above declared againſt him; and of this he putteth himſelf upon the country.

And the ſaid *C. D.* by *E. F.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he doth not detain from the ſaid *A. B.* the ſaid thirty pounds nor any part thereof, in manner and form as the ſaid *A. B.* above complaineth againſt him; and of this he putteth himſelf upon the country.

Non detinet *in debt.* Brownl. 170. Lilly's Entries 215.

And the ſaid *C.* by *K. P.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he did not undertake in manner and form as the ſaid *G.* above complaineth againſt him; and of this he putteth himſelf upon the country.

Non aſſumpſit.

And the ſaid *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and injury, when, *&c.* and ſay, that the ſaid *J. W.* [*the teſtator*] in his life-time did not undertake in manner and form as the ſaid *R.* above complaineth againſt them; and of this they put themſelves upon the country.

Non aſſumpſit *by executors.*

And the ſaid *T. W.* by *J. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he is not guilty of the premiſſes above laid to his charge, as the ſaid *H.* above complaineth againſt him; and of this he putteth himſelf upon the country.

Not guilty in caſe.

And

In treſpaſs. And ſaith, that he is not guilty of the ſaid treſpaſs, as, *&c.* (*ut ſupra*).

In aſſault. And ſaith, that he is not guilty of the ſaid treſpaſs and aſſault, as, *&c.*

Replication to the general iſſue. The replication to each of theſe general iſſues is this; and the ſaid *D.* doth ſo likewiſe, *i. e.* likewiſe puts himſelf upon the country.

Special pleas.

Non aſſumpſit infra ſex annos. And the ſaid *W.* by *J. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *E.* ought not to have her ſaid action therefore againſt him, becauſe he ſaith, that he did not undertake at any time within ſix years next before the day of * ſuing forth the original writ of the ſaid *E.* in manner and form, as the ſaid *E.* above complaineth againſt him; and this he is ready to verify: Wherefore he prayeth judgment, whether the ſaid *E.* ought to have her ſaid action therefore againſt him, *&c.*

Replication. And the ſaid *E.* ſaith, that ſhe by any thing before alledged ought not to be barred from having her ſaid action againſt the ſaid *W.* becauſe ſhe ſaith, that the ſaid *W.* at ſome time within ſix years next before the day of ſuing forth the original writ of the

* If at the ſuit of an attorney ſay, *ſuing forth the ſaid writ of privilege.*—If againſt an attorney, ſay *exhibiting the ſaid bill.*

ſaid

ſaid *E.* undertook in manner and form, as the ſaid *E.* above complaineth againſt him; and this ſhe prayeth may be inquired of by the country; and the ſaid *W.* doth ſo likewiſe, *&c.* *Rejoinder.*

And the ſaid *S.* by *K. M.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *V.* ought not to have his ſaid action againſt him, becauſe he ſaith the ſaid ſeveral cauſes of action did not accrue, nor did any of them accrue to the ſaid *V.* within ſix years next before the day of the obtaining the original writ of him the ſaid *V.* and this he is ready to verify: Wherefore he prayeth judgment if the ſaid *V.* ought to have his ſaid action thereof againſt him the ſaid *S.* Actio non accrevit infra ſex annos.

And the ſaid *V.* ſaith, that he by any thing above alledged ought not to be barred from having his action aforeſaid againſt him the ſaid *S.* becauſe he ſaith, that the ſaid ſeveral cauſes of action did accrue to the ſaid *S.* within ſix years next before the day of obtaining the original writ of him the ſaid *S.* to wit, on the aforeſaid 12th day of *Auguſt* in the year of our lord 1738. at the pariſh aforeſaid in the county aforeſaid; and this he prayeth may be inquired of by the country; and the aforeſaid *S.* doth ſo likewiſe, *&c.* *Replication.* *Rejoinder.*

And the ſaid *T.* by *J. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and as to the coming with force and arms, and whatever is againſt the peace of our now lord the king, the ſaid *T.* ſaith, *Son aſſault demeſne.*

that he is not guilty thereof; and of this he putteth himſelf upon the country; and the ſaid *R.* doth ſo likewiſe, *&c.* And as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *T.* ſaith, that the ſaid *R.* ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſaith, that the ſaid *R.* at the time in which the ſaid treſpaſs is above ſuppoſed to be done at *L.* in the county aforeſaid, with force and arms, *&c.* aſſaulted the ſaid *T.* and then and there would have beaten, wounded, and evilly treated the ſaid *T.* if he the ſaid *T.* had not then and there immediately defended himſelf againſt the ſaid *R.* by which the ſaid *T.* then and there defended himſelf againſt the ſaid *R.* and ſo the ſaid *T.* ſaith, if any damage or hurt then and there happened to the ſaid *R.* it was from the aſſault of the ſaid *R.* and in defence of the ſaid *T.* and this the ſaid *T.* is ready to verify: Wherefore he prayeth judgment, if the ſaid *R.* ought to have or maintain his ſaid action againſt him, *&c.*

Replication de injuria ſua propria.

And the ſaid *R.* ſaith, that he by any thing by the ſaid *T.* above by pleading alledged ought not to be precluded from having his ſaid action againſt the ſaid *T.* for the reſidue of the treſpaſs, becauſe he ſaith, that the ſaid *T.* on the day and year above mentioned, at *L.* aforeſaid in the county aforeſaid, of his proper injury, without the cauſe by the ſaid *T.* above by pleading alledged, aſſaulted the ſaid *R.* and beat, wounded and evilly treated him in manner and form as the ſaid *R.* above complaineth thereof againſt the

the ſaid *T.* And this he prayeth may be inquired of by the country; and the ſaid *T.* doth ſo likewiſe, *&c.* Therefore as well to try the ſaid iſſue, as the ſaid other iſſue above joined between the ſaid parties, the ſheriff is commanded, *&c.* *Rejoinder.* Venire *awarded.*

And the ſaid *R. J. G.* and *A.* by *T. F.* their attorney come and defend the force and injury, when, *&c.* and as to the coming with force and arms, and alſo the whole treſpaſs aforeſaid, except the aſſault and impriſonment aforeſaid, they ſay they are Not guilty thereof; and of this they put themſelves upon the country; and the ſaid *N.* doth ſo likewiſe; and as to the reſt of the treſpaſs aforeſaid above ſuppoſed to be done, they the ſaid *R. J. G.* and *A.* ſay, That the ſaid *N.* ought not to have his ſaid action thereupon againſt them, becauſe they ſay that before the ſaid time in which that aſſault and impriſonment is ſuppoſed to be done, to wit, in the term of St. *Hilary* in the —— year, *&c.* one *A. B.* duly ſued out of the court of our lord the king, before the king himſelf, (the ſaid court then being at *Weſtminſter* in the county of *Middleſex*) a certain writ of our ſaid lord the king of *Latitat* againſt the ſaid *N.* by the name of *N. F.* gent. and againſt *V. E. J. C.* and *J. C.* in the ſaid writ alſo named, directed to the then ſheriff of the county of *Devon*; by which ſaid writ the ſaid ſheriff of the ſaid county of *Devon* was commanded to take the ſaid *N. F. V. E. J. C.* and *J. C.* if they ſhould be found in his bailiwic, and to keep them ſafely, ſo that he might

Juſtification in aſſault and impriſonment.

Writ iſſued out of B. R. *againſt the plaintiff.*

Directed to the ſheriff of Devon.

that he is not guilty thereof; and of this he putteth himſelf upon the country; and the ſaid *R.* doth ſo likewiſe, *&c.* And as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *T.* ſaith, that the ſaid *R.* ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſaith, that the ſaid *R.* at the time in which the ſaid treſpaſs is above ſuppoſed to be done at *L.* in the county aforeſaid, with force and arms, *&c.* aſſaulted the ſaid *T.* and then and there would have beaten, wounded, and evilly treated the ſaid *T.* if he the ſaid *T.* had not then and there immediately defended himſelf againſt the ſaid *R.* by which the ſaid *T.* then and there defended himſelf againſt the ſaid *R.* and ſo the ſaid *T.* ſaith, if any damage or hurt then and there happened to the ſaid *R.* it was from the aſſault of the ſaid *R.* and in defence of the ſaid *T.* and this the ſaid *T.* is ready to verify: Wherefore he prayeth judgment, if the ſaid *R.* ought to have or maintain his ſaid action againſt him, *&c.*

Replication de injuria ſua propria.

And the ſaid *R.* ſaith, that he by any thing by the ſaid *T.* above by pleading alledged ought not to be precluded from having his ſaid action againſt the ſaid *T.* for the reſidue of the treſpaſs, becauſe he ſaith, that the ſaid *T.* on the day and year above mentioned, at *L.* aforeſaid in the county aforeſaid, of his proper injury, without the cauſe by the ſaid *T.* above by pleading alledged, aſſaulted the ſaid *R.* and beat, wounded and evilly treated him in manner and form as the ſaid *R.* above complaineth thereof againſt

the ſaid *T.* And this he prayeth may be inquired of by the country; and the ſaid *T.* doth ſo likewiſe, *&c.* Therefore as well to try the ſaid iſſue, as the ſaid other iſſue above joined between the ſaid parties, the ſheriff is commanded, *&c.*

Rejoinder.

Venire *awarded.*

And the ſaid *R. J. G.* and *A.* by *T. F.* their attorney come and defend the force and injury, when, *&c.* and as to the coming with force and arms, and alſo the whole treſpaſs aforeſaid, except the aſſault and impriſonment aforeſaid, they ſay they are Not guilty thereof; and of this they put themſelves upon the country; and the ſaid *N.* doth ſo likewiſe; and as to the reſt of the treſpaſs aforeſaid above ſuppoſed to be done, they the ſaid *R. J. G.* and *A.* ſay, That the ſaid *N.* ought not to have his ſaid action thereupon againſt them, becauſe they ſay that before the ſaid time in which that aſſault and impriſonment is ſuppoſed to be done, to wit, in the term of St. *Hilary* in the —— year, *&c.* one *A. B.* duly ſued out of the court of our lord the king, before the king himſelf, (the ſaid court then being at *Weſtminſter* in the county of *Middleſex*) a certain writ of our ſaid lord the king of *Latitat* againſt the ſaid *N.* by the name of *N. F.* gent. and againſt *V. E. J. C.* and *J. C.* in the ſaid writ alſo named, directed to the then ſheriff of the county of *Devon*; by which ſaid writ the ſaid ſheriff of the ſaid county of *Devon* was commanded to take the ſaid *N. F. V. E. J. C.* and *J. C.* if they ſhould be found in his bailiwic, and to keep them ſafely, ſo that he might

Juſtification in aſſault and impriſonment.

Writ iſſued out of B. R. *againſt the plaintiff.*

Directed to the ſheriff of Devon.

might have their bodies before our ſaid lord the king at *Weſtminſter*, on *Monday* next after the morrow of the *Aſcenſion* of our lord then next enſuing, to anſwer the ſaid *A. B.* in a plea of treſpaſs, and alſo to a bill of the ſaid *A.* againſt the ſaid *N.* for 60*l.* of debt, according to the cuſtom of the court of our ſaid lord the king, before the king himſelf to be exhibited; which ſaid writ afterwards, and before the return thereof, to wit, on the ninth day of *May* in the —— year, *&c.* the ſaid *A. B.* at *S.* aforeſaid delivered to one Sir *E. S.* bart. then ſheriff of the ſaid county of *D.* to be executed in due form of law. By virtue of which ſaid writ, the ſaid Sir *E. S.* then ſheriff of the county aforeſaid afterwards, to wit, on the ——day of——in the ——year aforeſaid, and before the return of the ſaid writ, at *S.* aforeſaid made his certain warrant in writing, ſealed with the ſeal of his office, directed to the ſaid *R. J. G.* and *B.* and to one *R. E.* by which ſaid warrant the ſaid then ſheriff, on the behalf of our lord the king, commanded the ſaid *R. J. G. B.* and *R.* and each of them, that they ſhould take the ſaid *N. F.* if he ſhould be found in his bailiwic, and that, *&c.* ſo that the ſaid ſheriff might have his body before our ſaid lord the king at *Weſtminſter*, on the ſaid *Monday* next after the morrow of the *aſcenſion* of our lord, to anſwer the ſaid *A. B.* of the plea and bill aforeſaid, which ſaid warrant afterwards, to wit, on the ſaid ——— day of ——— in the ——— year aforeſaid, at *S.* aforeſaid, was delivered to the ſaid *R. J. G.* and *B.*

Writ delivered to the ſheriff.

Warrant thereupon to defendants.

to be executed according to law; by virtue of which ſaid warrant they the ſaid *R. J. G.* and *B.* afterwards, and before the return of the ſaid writ, to wit, on the —— day of —— in the —— year aforeſaid, at *S.* aforeſaid, took and arreſted the ſaid *N. F.* and then and there had him in their cuſtody by virtue of the ſaid warrant, and detained the ſaid *N.* as it was lawful for them to do, by the time in the ſaid declaration above ſpecified, which ſaid taking and arreſting the ſaid *N.* in form aforeſaid, and for the cauſe aforeſaid, are the ſame aſſault and impriſonment, whereof the ſaid *N.* above complaineth; without this, that they the ſaid *R. J. G.* and *B.* or either of them, are guilty of any aſſault and impriſonment, otherwiſe, or in any other manner before or after the ſaid —— day of —— in the —— year aforeſaid; and this they are ready to verify: Wherefore they pray judgment if the ſaid *N.* ought to have his action thereupon againſt them, *&c.*

By virtue whereof they arreſted the plaintiff.

Traverſe.

Sed vide *as to this plea*, 3 Lev. 62, 63.

And the ſaid *T.* by *R. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that at the time of making the ſaid ſeveral promiſes and undertakings he was within the age of twenty-one years; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *W.* ought to have his ſaid action thereupon againſt him, *&c.*

Infra ætatem.

And the ſaid *W.* ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action againſt the ſaid *T.* becauſe

Replication, for neceſſary apparel ſuitable to defendant's degree.

becauſe he ſaith, that the ſaid 20 *l.* expended and laid out by him the ſaid *W.* for the ſaid *T.* and the taylor's work done and performed by him the ſaid *W.* together with the materials and neceſſary things uſed in and about the ſaid work, and in form aforeſaid found and provided by the ſaid *W.* for the ſaid *T.* were laid out and expended, done and performed, found and provided by the ſaid *W.* at *London* aforeſaid, in the pariſh and ward aforeſaid, for the neceſſary apparel and cloathing of the body of the ſaid *T.* his degree requiring the ſame; and this he is ready to verify: Whereupon he prayeth judgment, and his ſaid damages by occaſion of the premiſſes, to be adjudged to him, *&c.*

Rejoinder, not for neceſſary apparel, &c.

And the ſaid *T.* ſaith, that the ſaid 20 *l.* expended and laid out by the ſaid *W.* and the ſaid taylor's work done and performed by the ſaid *W.* together with the materials and things neceſſary, uſed in and about the ſaid work, and in form aforeſaid found and provided by the ſaid *W.* for the ſaid *T.* were not for the neceſſary apparel and cloathing of the body of the ſaid *T.* in manner and form as the ſaid *W.* has thereupon above by replying alledged; and of this he putteth himſelf upon the country; and the ſaid *W.* doth ſo likewiſe, *&c.*

Dureſs to a bond.

And the ſaid *H. J.* by *S. A.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *S. C.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that he, at the time of making the writing aforeſaid, was impri-

impriſoned by the ſaid *S. C.* and others by his contrivance, *to wit*, at *T.* aforeſaid in the county aforeſaid, and was there detained in priſon until he the ſaid *H. J.* by force and dureſs of impriſonment then and there made the ſaid writing to the ſaid *S. C.* wherefore he prayeth judgment if the ſaid *S. C.* ought to have or maintain his ſaid action aforeſaid, *&c.*

Mich. 10 *Geo.* 2.

1 Count. *Indeb. aſſ.* for ſerving defendant as a hired ſervant.

2 *Indeb. aſſ.* for work and labour.

3 *Quantum meruit*, for nurſing defendant's daughter.

4 *Inſimul computaſſet.*

Plea of tender of 3 s. 6 d.

And the ſaid *John Carter* by *J. S.* his attorney cometh and defendeth the force and injury, when, *&c.* And as to the firſt promiſe and aſſumption in the ſaid declaration mentioned, except as to 3 *s.* 6 *d.* part of the ſaid ſum of 10 *l.* therein mentioned; and as to all the other promiſes and aſſumptions mentioned in the ſaid declaration, the ſaid *John* ſaith, that he did not aſſume upon himſelf in manner and form as the ſaid *Margaret* above thereof complaineth againſt him; and of this he putteth himſelf upon the country; and as to the ſaid 3 *s.* 6 *d.* part of the ſaid ſum of 10 *l.* in the ſaid firſt promiſe and aſſumption in the ſaid declaration mentioned; and as to the ſaid firſt promiſe and aſſumption in that behalf, the ſaid *John* ſaith, that the ſaid *Margaret* ought not to

Lilly's Ent. 476. Pract. Reg. 562, 565. 1 Lutw. 368.

have or recover againſt him any more damages by reaſon of the not paying thereof, than the ſaid 3 *s.* 6 *d.* becauſe he ſaith, that after the ſaid firſt promiſe and aſſumption above ſuppoſed to be made, and before the ſuing out the original writ of the ſaid *Margaret*, to wit, on the firſt day of *January* in the year of our lord 1735, at *Weſtminſter* aforeſaid, he the ſaid *John* was ready and offered to pay, and tendered to the ſaid *Margaret* the ſaid 3 *s.* 6 *d.* which the ſaid *Margaret* then and there refuſed to accept from the ſaid *John*. And the ſaid *John* further ſaith, that from the time of making the ſaid firſt promiſe and aſſumption hitherto he hath been always ready, and ſtill is ready, to pay the ſaid 3 *s.* 6 *d.* to the ſaid *Margaret*, and he bringeth the ſame here into court, ready to be paid to the ſaid *Margaret* if ſhe is willing to receive the ſame; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *Margaret* ought to have or recover againſt him any more damages than the ſaid 3 *s.* 6 *d.* *&c.*

W. Chapple.

The money to be paid into court to the prothonotary when the plea is left, which ſhould be pleaded in 4 *days.*

Replication. And as to the ſaid plea of the ſaid *John* as to the firſt promiſe (except as to 3 *s.* 6 *d.* part of the ſaid ſum of 10 *l.*) and as to all the other promiſes mentioned in the ſaid declaratio,

claration, the ſaid *Margaret* ſaith, that the ſaid *John* did promiſe and undertake in ſuch manner and form as the ſaid *Margaret* hath above complained againſt him the ſaid *John*; and of this ſhe likewiſe putteth herſelf upon the country; and as to the ſaid 3 *s.* 6 *d.* part of the ſaid 10 *l.* in the ſaid firſt promiſe mentioned, and in bar pleaded to be tendered as above, ſhe the ſaid *Margaret* ſaith, that by reaſon of any thing by the ſaid *John* above in pleading alledged ſhe ought not to be precluded from having her ſaid damages therefore againſt him the ſaid *John*, becauſe ſhe ſaith that he the ſaid *John* did not at any time before the ſuing out of the ſaid original writ of the ſaid *Margaret*, offer to pay or tender unto the ſaid *Margaret* the ſaid ſum of 3 *s.* 6 *d.* as the ſaid *John* hath above in his pleading alledged; and this ſhe prayeth may be inquired of by the country, *&c.* And the ſaid *John* doth ſo likewiſe, *&c.* Therefore, *&c.*

And *Thomas Merriton*, who is impleaded by the name of *Thomas Moreton*, in his proper perſon cometh and defendeth the force and injury, *&c.* and ſaith, that he is now, and always was called and known by the ſurname of *Merriton*, and not *Moreton*, as by the ſaid writ and declaration is above ſuppoſed; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.* *Plea of miſnomer.*

And *John Smith*, late of the pariſh of St. *James* within the liberty of *Weſtminſter* in the *Abatement.* *Defendant a yeoman and*

not a cheeſemonger.

the county aforeſaid, yeoman, againſt whom the ſaid *Ralph Bigland* hath brought his ſaid writ, by the name of *John Smith* late of the pariſh of St. *James* within the liberty of *Weſtminſter* in the county aforeſaid, cheeſemonger, in his proper perſon cometh and defendeth the force and injury, *&c.* and ſaith, that on the day of ſuing out the ſaid original writ, and long before, he was, and yet is a yeoman, *and not of any myſtery, trade or profeſſion*; without this, that the ſaid *John Smith* on the day of ſuing out the ſaid original writ, or at any time before or ſince, was a cheeſemonger; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed. [See more pleas in abatement, *Vol.* 2. *fo.* 1. to 17.]

Defendant ought regularly to ſhew his myſtery, not his degree, but being of no trade theſe words are intended to anſwer that objection.

Plea to be delivered in writing to the plaintiff's attorney.

The defendant is to deliver his plea in writing [on paper ſtamped with a double penny ſtamp] to the plaintiff's attorney. *Mich.* 1654.

When to be left in the office.

And if there be no ſuch attorney to be found, or being found refuſeth to accept it, then the plea may be left in the office. *Same rule.*

Rule to plead, and an order for time.

Where a rule to plead has been given, and the defendant obtains an order for time to plead till the firſt day of the next term, the plaintiff may ſign judgment in default of the defendant's pleading, without giving a new rule.

Plaintiff need not give a new rule.

The like where delayed by an injunction.

Where the plaintiff has given a rule to plead, and has been delayed from ſigning judgment by an injunction out of *Chancery*, after

after the injunction is diſſolved he may ſign judgment without giving a new rule.

A plea delivered to the attorney in the country is irregular, it muſt be delivered to the agent in town or left in the office. *Sed vide antea fo.* 107. *Plea can't be delivered in the country.*

If the defendant pleads a falſe plea, as *Nil debet* to an action on the caſe upon *aſſumpſit*, the plaintiff may ſign judgment. Nil debet *to* aſſumpſit, *Plt. may ſign judgment.*

A plea of tender ought regularly to be pleaded in the ſame manner as a plea in abatement, *viz.* in four days after the declaration delivered, if delivered four days before the end of the term; and if the declaration be delivered before the eſſoin-day of a term, then it muſt be delivered within the firſt four days of that term, as a plea of the laſt term; but this is to be diſpenſed with upon particular circumſtances, as if the defendant lives at a diſtance in the country, ſo that his attorney cannot deliver this plea in due time, the court will upon ſuch reaſonable cauſe give further time to plead a tender, as of the term in which the declaration was delivered, but ſuch application ſhould be within the four days, or at leaſt as ſoon as poſſible it can be without any delay on the defendant's part. *Tender when to be pleaded.*

No dilatory plea ſhall be received unleſs the party offering the ſame do by affidavit prove the truth thereof, or ſhew ſome probable matter to the court to induce them to believe that the fact of ſuch dilatory plea is true. *Stat.* 4 & 5 *Annæ.* *No dilatory plea to be received without affidavit.*

Affidavit to plea of infancy.

A plea of *Infra ætatem* ought to have an affidavit annexed to verify the truth of the plea.

Plea in abatement to be pleaded in four days.

A plea in abatement muſt be pleaded within the firſt four days after the declaration is delivered or left in the office, although no rule to plead be given, or elſe the defendant muſt within that time procure a ſpecial imparlance; and a plea in abatement otherwiſe pleaded is a mere nullity, and the plaintiff may ſign judgment.

For want of affidavit to plea in abatement plaintiff may ſign judgment.

If a plea, which ought to be verified by affidavit, has not an affidavit annexed, the plaintiff may *inſtanter*, without applying to the court for leave, ſign judgment as tho' no plea had been delivered.

And if a plea, which ought to have a ſerj. hand, be delivered without.

If a plea, which ought to be ſigned by a ſerjeant, be delivered without a ſerjeant's hand, the plaintiff may ſign judgment as if no plea had been delivered.

What pleas do not require a ſerj. hand.

The following pleas do not require a ſerjeant's hand, *viz.*

Comperuit ad diem,
Son aſſault,
Plene adminiſtravit,
Riens per diſcent,
Nul tiel record,
Per minas,
Solvit ad diem,
Ne unques executor,
Infra ætatem.

Demand of a plea to be in writing.

The demand of a plea muſt be in writing, and the demand of a plea indorſed on the back of the declaration is inſufficient.

When to ſign judgment.

The plaintiff cannot ſign judgment for want of a plea, 'till the afternoon of the day after the rule to plead is out.

Where

Where the defendant obtains a judge's order for time to plead, the plaintiff cannot ſign judgment till the afternoon of the day after the time given by the order is expired; as if by the order the defendant has till *Monday* to plead, the plaintiff can't ſign judgment before *Tueſday* in the afternoon. *When on a judge's order for time to plead.*

A ſummons for time to plead ought not to be taken out after the rule to plead is out; and if ſuch ſummons be taken out and ſerved, 'tis no ſtay of proceedings. *No ſummons to be taken out after rule to plead is out.*

If the defendant takes out a judge's ſummons for time to plead, the plaintiff cannot ſign judgment 'till the ſummons is diſcharged. *After ſummons no judgment till ſummons diſcharged.*

A plea of tender is not an iſſuable plea within the meaning of a judge's order for time to plead, on pleading an iſſuable plea. *Plea of tender.*

If judgment be ſet aſide on payment of coſts, and pleading an iſſuable plea, the defendant cannot plead the ſtatute of limitations; for it is not an iſſuable plea within the meaning of the rule, for ſetting aſide the judgment the rule ſhould be on pleading the general iſſue. *Stat. of limitations.*

If the defendant crave oyer he ſhall have as many days to plead after oyer given, as he had to plead at the time oyer was demanded. *What time the defendant has to plead after oyer.*

If oyer be demanded after rule to plead is out, the plaintiff may ſign judgment notwithſtanding, but if the defendant has eight days to plead; he may demand oyer at any time within the eight days, notwithſtanding the four day rule to plead is expired.

If

On oyer defendant intitled to witneſſes names and all indorſements.

If the defendant prays oyer and copy of a bond, he is intitled to inſpect it and have a copy of the whole, with the witneſſes names, and all memorandums ſubſcribed and indorſed.

If defendant makes the oyer no part of his plea, plaintiff may make it part of the iſſue.

If the defendant prays oyer, and afterwards delivers a plea without making the oyer part of it, the plaintiff may make up the iſſue with oyer, for the pleadings are ſuppoſed to be *Ore tenus* at the bar, and a record is to be made of what is done there.

Within what time the defendant ought to deliver oyer of a deed pleaded by him.

The defendant pleaded a releaſe, with a *Profert hic in curia*, on the 12th of *November* the plaintiff craved oyer, and on the 14th ſigned judgment, for want of oyer being given him; and it was held that this judgment was regularly ſigned, that from the 12th to the 14th was a reaſonable time for the defendant to give the plaintiff oyer, and that the plaintiff had no need to apply to the court to ſet aſide the plea; for, after oyer craved by the plaintiff, the defendant is bound to verify his plea. *Blaxland* againſt *Burgis*, *Mich.* 7 *Geo.* 2.

Def. may waive his ſpecial plea, and plead the general iſſue.

The defendant may waive his ſpecial plea, and plead the general iſſue the ſame term, without payment of coſts or application to the court.

Sed Q. If the plaintiff has replied, whether the defendant muſt not apply to the court and pay coſts?

Can't withdraw a plea of tender.

After a plea of tender, and money brought into court, the court will not admit the defendant to withdraw his plea, and plead the general iſſue.

Of

Of double pleas.

Double pleas allowed.

DOuble pleas allowed, *viz.*—*Non aſſumpſit*, and *Non aſſumpſit infra ſex annos.*

Non aſſumpſit, and a diſcharge under the inſolvent debtors act.

In replevin, leave given to avow two matters, *viz.* a juſtification of the diſtreſs under a leaſe for years, and that the goods diſtrained were not the property of the plaintiff.

In treſpaſs, *Non cul.* and *Liberum tenementum alterius. Vide infra.*

Solvit ad diem, and a mutual debt.

Damage feaſant, and under a demiſe from the defendant to the plaintiff.

Damage feaſant, and for rent in arrear.

Non aſſumpſit, a ſet off, and a tender, as of laſt term.

A tender to the firſt count, and *Non aſſumpſit* to the reſidue.

Non aſſumpſit, and *Plene adminiſtravit.*

Plene adminiſtravit, and a ſet off.

Ne unques executor, and *Plene adminiſtravit.*

Non eſt factum, and *Ne unques executor.*

Non eſt factum, and dureſs.

Not guilty, and a general releaſe.

Not guilty, and 4 guineas paid in ſatisfaction of all treſpaſſes to ſuch a time.

Not guilty, *Son aſſault*, and ſatisfaction for all treſpaſſes.

Not guilty, *Son aſſault*, and *Molliter manus impoſuit.*

Not

Not guilty, and a juſtification.

Double plea denied. Double pleas denied, *viz.*—*Non aſſumpſit*, and a releaſe, as contradictory.

Non aſſumpſit, *Non aſſumpſit infra ſex annos*, and leave to bring money into court.

Non aſſumpſit, and infancy; becauſe it may be given in evidence.

Solvit ad diem, and *Riens per diſcent*, the like.

Non eſt factum, and *Solvit ad diem.*

Liberum tenementum, and a juſtification, the like.

Nil debet, and *Nil habuit in tenementis*, the latter may be given in evidence.

Not guilty, and *Liberum tenementum*, denied as contradictory, and no affidavit being produced to verify that the defendant's caſe required both pleas for his defence.

In trover Not guilty, and that plaintiff became a bankrupt and his effects aſſigned.

Not guilty, and a tender.

Not guilty, and a licence, without an affidavit, denied where the pleas are contradictory; the defendant ſhould make it appear by affidavit, that it is neceſſary for his defence to inſiſt upon both. If the treſpaſs be by cattle, the nature of the caſe is ſufficient; an affidavit is not neceſſary, becauſe the fact may not be in the party's knowledge; if by the party himſelf, he muſt move upon affidavit.

Not guilty, and a releaſe of a particular treſpaſs is never admitted, but a Not guilty, and a general releaſe has been admitted, where an affidavit has been produced.

The

The defendant may have leave to plead double any time before judgment ſigned, tho' the rule to plead be out, but not before appearance. *Leave to plead double any time before judgment.*

After the defendant has pleaded a ſingle plea, he can't have leave to add another. *Not after ſingle plea.*

After the defendant has paid money into court, he can't have leave to plead double. *Nor after money brought into court.*

The defendant, with leave of the court pleaded *Non aſſumpſit*, and *Non aſſumpſit infra ſex annos*; to the latter the plaintiff replied an original: Iſſue was joined on *Nul tiel record*, and judgment for the plaintiff; whereupon he executed a writ of inquiry, but did not proceed on the iſſue of *Non aſſumpſit*. The defendant moved to ſet aſide the writ of inquiry; the plaintiff inſiſted he might enter *Noli proſequi* on the iſſue of *Non aſſumpſit*, and take his execution on the iſſue that was found for him. The defendant inſiſted both pleas went to the whole declaration; and if any one iſſue was found for the defendant, the plaintiff was barred of his demand. *Cur':* It is a judgment only as to part, and not upon the whole proceeding, and the inquiry could not be executed before the other iſſue was tried. The defendant has a double defence given him, and if any one be found for him, he ſhall be excuſed, therefore this writ of inquiry is wrong; and if this way of proceeding was to be allowed, there is an end of pleading double. *Prior* v. *Com. Ilay* Exec. *Hil.* 7 *G.* 2. *On double plea, if plt. hath judgment in one, he can't enter a* Noli proſequi *as to the other.*

Action on a promiſſory note, double plea, *viz. Non aſſumpſit*, and *Non aſſumpſit infra ſex annos*: *If either found for the def. the plaintiff can't recover.*

annos: To the latter the plaintiff replied an original, and on *Nul tiel record* had judgment; but on trial upon the *Non aſſumpſit* was nonſuited. On the iſſue in which he had judgment he executed a writ of inquiry, which the defendant moved to have ſet aſide, and ſaid, that the two pleas go to the whole; and if either be found for the defendant, the plaintiff cannot recover. It was urged for the plaintiff, that by the ſtatute for the amendment of the law, where ſeveral matters are pleaded by the defendant, if any be found for the plaintiff, he ſhall recover. *Cur':* This is a conſideration. Adjourned. *Poſtea* writ of inquiry ſet aſide. *Prior* v. *Com. Ilay* Exec. *Mich.* 8 *Geo.* 2.

Def. to pay for a copy of the iſſue, and entring his pleadings.

When iſſue is joined, the plaintiff delivers the defendant's attorney a copy thereof on double penny ſtamped paper, he paying for the ſame after the rate of 4*d.* a ſheet, beſides the duty; and for the entry of his plea, according to the length, if the general iſſue, only 2*s.* and for filing his warrant of attorney 8*d.* v. *poſtea fol.* But note, if the iſſue be of the ſame term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings ſubſequent to the declaration, for he is not obliged to pay for two copies of the declaration in the ſame term.

Where plt. appears for the def. he may charge it on the back of the iſſue.

If the plaintiff enter the appearance for the defendant, he may charge for it on the back of the iſſue, and if the defendant's attorn-

attorney will not pay it, he may ſign judgment.

Deft's attorney, if copy of iſſue overcharged, may tender what really due.

The practice was formerly, that the defendant's attorney muſt pay for the copy of the iſſue at all events, or the plaintiff might ſign judgment; and if it be overcharged, the defendant might apply to the court. But now it is held, that if the defendant's attorney is ready to pay, and tenders what is really due, it is ſufficient. Where the defendant is a priſoner, and no attorney appears to be concerned for him, the plaintiff cannot ſign judgment for not paying for the copy of the iſſue.

How if def. be a priſoner, and no attorney concerned.

Method of making up the iſſue.

The method of making up the iſſue in this court is the ſame with the method uſed in the court of *King's Bench*, when the proceedings are by original; and when the proceedings in this court are by bill, the iſſue begins with a memorandum, as in the *King's Bench* on proceedings by bill. An iſſue by original begins thus.

Cooke.

Trinity *term* (*the term the iſſue is joined*) *in the year of king* George *the ſecond.*

Middleſex, *to wit*, *A. B.* late of *Weſtminſter* in the county of *Middleſex*, gentleman, was attached to anſwer *C. D.* of, *&c.* [*to the end of the declaration*] And thereof he bringeth ſuit, and ſo forth.

Then

Venire facias awarded. Then begin a new line, and enter the pleadings to the end of the iſſue, after which follows the award of the *Venire* in this form, ——Therefore it is commanded to the ſheriff, that he cauſe to come here from the day of, *&c.* (*ſome return before the day of trial*) Twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Because as well, *&c.*

Cooke.

Trinity *term in the ſixteenth year of the reign of king* George *the ſecond.*

Entry of an iſſue on a bill againſt an attorney, where the iſſue is joined in a term ſubſequent to that in which the bill was filed. HEretofore as it appeareth in the term of *Eaſter* laſt paſt in the 864. roll it is thus contained. *Middleſex, to wit,* Be it remembered, that on the 25th day of *May* in this ſame term *R. L.* came here into court by *L. R.* his attorney, and exhibited to the juſtices of our lord the king of the bench here his bill againſt *M. U.* gent. one of the attornies of the court of our ſaid lord the king of the bench here preſent, here in court in his proper perſon, in a plea of treſpaſs on the caſe, the tenor of which ſaid bill followeth in theſe words, *to wit,* To the juſtices of our lord the king of the bench. *Middleſex, to wit, R. L.* by *L. R.* his attorney complaineth againſt *M. U.* gent. one of [*ſet forth the whole bill* verbatim *to*] And thereupon he prayeth relief, *&c.* Pledges of proſecuting *John Doe* and *Richard Roe.*

And

And the ſaid *M.* in his proper perſon cometh and defendeth the force and injury, when, *&c.* and prayeth leave to imparl thereupon here, until *Friday* next after the morrow of the Holy *Trinity*; and hath, *&c.* The ſame day is given to the ſaid *R.* here, *&c.* And now here at this day cometh as well the ſaid *R.* by his attorney aforeſaid, as the ſaid *M.* in his proper perſon. And upon this the ſaid *R.* prayeth, that the ſaid *M.* may anſwer to his ſaid bill, *&c.* And the ſaid *M.* as before defendeth the force and injury, *&c.* And ſaith, that he did not undertake and promiſe in manner and form as the ſaid *R.* above declareth againſt him; and of this he putteth himſelf upon the country, *&c.* And the ſaid *R.* doth ſo likewiſe, *&c.* Therefore the ſheriff is commanded that he cauſe to come here on next after Twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* *Imparlance.*

See more of this among the pleadings at the end of the book.

In country cauſes the iſſue muſt be delivered to the agent in town, and not to the attorney in the country; and where it has been agreed between the country attornies, that the iſſue ſhould be delivered in the country, and has been afterwards tendered to the agent in town, and not paid for, judgment has been ſigned, and held regular. *In country cauſes iſſue to be delivered to the agent in town, and not to the country attorney.*

But where the defendant has pleaded by his country attorney, the iſſue may be tendered *Except.*

to the country attorney, and if not paid for by him, judgment may be ſigned.

Attorney to enter his warrant on record.

Every attorney ſhall enter his warrant of attorney in every ſuit upon record in court, on pain of 10*l.* and further puniſhment by impriſonment, at the diſcretion of the court. *Stat.* 32 *H.* 8. *c.* 30. §. 2. made perpetual 2 & 3 *E.* 6. *c.* 32. and *vide ſtat.* 18 *Eliz. c.* 14. §. 3.

When to be filed.

Warrants of attorney are to be filed of the term wherein any exigent is awarded, demurrer or iſſue joined, or judgment entered, which ſhall firſt happen, and to be filed upon or before the eſſoin-day of every *Trinity-Term*, and within one and twenty days after the end of every other term. *Hil.* 14, 15 *Car.* 2.

Deſt.'s attorney, on receiving the iſſue, to pay the plt.'s attorney the fee for filing his warrant, otherwiſe judgment.

Every plaintiff's attorney who ſhall proſecute any cauſe to iſſue, ſhall, upon the delivery of the copy of ſuch iſſue, receive of the defendant's attorney the fee for filing his warrant therein; and in caſe the defendant's attorney ſhall refuſe to pay for the ſame, the plaintiff's attorney may ſign his judgment in like caſe, as if the defendant's attorney had refuſed to pay for the copy of the iſſue, or the entry of his plea; and the plaintiff's attorney ſhall file as well the defendant's as the plaintiff's warrant of attorney. *Hil.* 2, 3 *Jac.* 2.

Plt.'s attorney to file his warrant the term he declares, and the deft.'s attorney the term he appears.

The plaintiff's attorney in any action or ſuit ſhall file his warrant of attorney with the proper officer the ſame term he declares, and the attorney for the defendant ſhall file his warrant of attorney, as aforeſaid, the

ſame

ſame term he appears, under the penalties inflicted upon attornies by any former law, for default of filing their warrants of attorney. *Stat.* 4, 5 *Annæ.*

Great inconveniencies having happened by attornies neglecting to file their warrants of attorney, by which judgments have been reverſed, and plaintiff's loſt their debts; it was ordered therefore that no judgments whatſoever (except final judgments upon *poſteas*, writs of inquiry, and *Non pros'*) ſhall be ſigned by any of the prothonotaries, unleſs the ſtamp of the clerk of the warrants be impreſſed on the paper, whereon ſuch judgment is to be ſigned, whereby it may appear the warrants of attorney are duly filed. *Mich.* 5 *Geo.* 2.

No judgment (except, &c.) to be ſigned before the judgment paper be ſtamped by the clerk of the warrants.

The plaintiff's attorney, on delivering a copy of the declaration to the defendant's attorney, charges 8 *d.* for filing the defendant's warrant of attorney, and which he generally files at the ſame time he files the plaintiff's warrant, and on the ſame piece of parchment.

Theſe warrants are to be wrote on parchment in the following form:

Hilary *term in the twelfth year of the reign of* George *the ſecond.*

Middleſex, E. *F.* putteth in his place *R. C.* his attorney againſt *A. B.* late of, &c. yeoman, in a plea of treſpaſs on the caſe [*or otherwiſe, as the action is.*]

Plaintiff's warrant of attorney.

Defendant's warrant of attorney.

Middleſex, *A. B.* late of, *&c.* yeoman, putteth in his place *N. F.* his attorney, againſt *E. F.* in the plea aforeſaid.

If the defendant be deſcribed in the pleadings with an *Alias dict.* or the plaintiff or defendant be an executor or adminiſtrator, he muſt be named in the warrant of attorney in the ſame manner exactly as in the pleadings.

The nature of the action muſt be expreſſed in the warrant, according as the caſe ſhall be; as thus: In a plea of debt. In a plea of treſpaſs. In a plea of treſpaſs on the caſe. In a plea of treſpaſs and ejectment of farm. In a plea of treſpaſs and aſſault. In a plea of treſpaſs, aſſault and impriſonment.

On the back of the iſſue you give notice of trial, thus:

Mr. *T. V.*

Notice of trial.

Take notice of trial in this cauſe for the ſitting after this preſent *Michaelmas-term*, at *Guildhall, London.*

Your humble ſervant,

1 *Nov.* 1756. L. R. *attorney for the plaintiff.*

Eight days in London *or* Middleſex.

If the trial is to be in *London* or *Middleſex*, (and the defendant dwells within forty miles of *London*) there muſt be eight days notice thereof given excluſive of the day whereon the notice is given. *Mich.* 1654.

If

If the defendant lives above forty miles from *London*, there must be fourteen days notice of such trial to be had in *London* or *Middlesex*, exclusive of the day of the notice. *Same rule.* *When 14 days in* London *or* Middlesex.

Of trials in the country there must be eight days notice given exclusive of the day of notice. *Same rule.* But alter'd as follows. *Eight days in the country.*

No cause whatsoever shall be tried at *Nisi prius* before any judge or justice of assize or *Nisi prius*, or at the sittings in *London* or *Westminster*, where the defendant resides above forty miles from the said city respectively, unless notice of trial in writing has been given at least ten days before such intended trial. *Stat.* 14 *Geo.* 2. *c.* 17. §. 4. (This act does not alter the above rule for fourteen days notice of trial in *London* or *Middlesex*, where the defendant lives above forty miles from *London*.) *When ten days notice of trial.*

And in case any person shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing at least six days before such intended trial, such party shall be obliged to pay unto the party to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such notice of trial had not been countermanded. *Same stat.* §. 5. *And six days notice of countermand.*

Notice of trial on an old issue may be given to the attorney in the country, for it may be given either to the attorney or the agent, but where notice of trial is given on *Notice of trial when to be given to attorney or agent.*

the iſſue book it muſt be given to the agent, becauſe the iſſue can be delivered no where but in town. Notices of trial, and countermands in notices of executing writs of inquiry and countermands may be given either to the attorney in the country, or to the agent in town; but of thoſe things which are done only in town, notice muſt be given to the agent; and all notices where the party hath a known attorney, muſt be given to that attorney or his agent, and not to the party himſelf.

Of notices in general.

A term's notice where no proceeding for four terms excluſive.

To be given before the eſſoin-day of the term.

What deemed a proceeding.

In all caſes where there have been no proceedings for four terms, excluſive of the term in which the laſt proceeding was had, the party who deſires to proceed again, ſhall give a term's notice to the other of ſuch proceeding; ſuch notice ſhall be given before the eſſoin-day of the fifth or other ſubſequent term; a judge's ſummons, if no order be made thereupon, ſhall not be deemed a proceeding; but a notice of trial, though afterwards countermanded, ſhall be deemed a proceeding within this rule. *Paſch.* 13 *Geo.* 2.

Where the plaintiff concludes ad patriam, *the defendant to accept notice of trial on the back of the pleading.*

Heretofore where the plaintiff in pleading concluded *ad patriam* (to the country) he could not give notice of trial till the defendant had joined iſſue, which he was not obliged to do till a four-day rule for that purpoſe was expired. But now in all caſes where the plaintiff concludes *ad patriam*, the defendant's attorney muſt accept notice of trial on the back of ſuch pleadings, whether the ſame be delivered to the defendant's attorney

torney or agent, or left in the office; and ſuch notice ſhall be as effectual as if iſſue had been joined. *Trin.* 2 *Geo.* 1.

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of the pleadings (purſuant to laſt rule) if the defendant does not join iſſue before the rule is out, then after judgment obtained the defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry from the time that the notice of trial was given on the back of the pleadings. *Hil.* 6 *Geo.* 1.

And if don't join in iſſue, to accept of notice of inquiry from the time of the notice of trial.

Notice of trial, or of executing a writ of inquiry given to a defendant when his attorney is known, is not good notice; but when his attorney is not known, then the notice may be given to the defendant. *Vide antea fo.*

Notice of trial not to be given to the defendant if his attorney be known.

Where the plaintiff may give a ſhort notice of trial, as where the defendant has had time given him to plead on taking ſhort notice of trial, the plaintiff muſt give him as much notice as he can.

Where the plt. may give ſhort notice, he muſt give as much as he can.

If the plaintiff ought to give 14 days notice of trial, if he was to proceed to trial, and the defendant intends to have the cauſe tried by proviſo, he muſt give the ſame notice of trial as the plaintiff ſhould have done.

For trial by proviſo def. muſt give the ſame notice as plaintiff ſhould have done.

The next thing to be done is to enter the iſſue, and prepare the *Niſi prius* record for trial, which muſt be ingroſſed on a piece of parchment ſtamped with a double half crown ſtamp, which you muſt do in this manner.

Of making up the Niſi prius *record.*

Cooke.

Pleas at Weſtminſter, *before Sir* John Willes, *knight, and his companions, juſtices of our lord the king of the bench, of* Eaſter *Term in the twelfth year of the reign of our ſovereign* George *the ſecond, by the grace of God, of* Great Britain, France *and* Ireland *king, defender of the faith, &c.*

Roll

Middleſex, *to wit*, *C. L.* late of, *&c.* gentleman, was attached to anſwer *R. R.* of a plea of treſpaſs, on the caſe; and whereupon the ſaid *R. R.* by *J. S.* his attorney complaineth, that whereas, *&c.* (*to the end of the iſſue and award of the* Venire.)

Note; In the *Common Pleas* the *Placita* is wrote but once, except on the death or change of a chief juſtice, or on an old record, in which caſe you write a ſecond *Placita*, then you write the *Jurata* in this manner.

Middleſex, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, *&c.* gentleman, in a plea of * treſpaſs on

* In replevin, ſay, taking and unjuſtly detaining the cattle of the ſaid *R.*

the

the caſe, are reſpited here until on the morrow of the Holy *Trinity* (the return of the *Habeas corpora juratorum*, and which ſhould be the next return after the day of trial) unleſs Sir *John Willes*, knight, the king's chief juſtice of the bench, here aſſigned by form of the ſtatute in that caſe made and provided, ſhall come before, on *Tueſday*, the day of [*the day of the ſittings*] at *Weſtminſter*, in the great hall of pleas, there, commonly called *Weſtminſter hall*, in the ſaid county of *Middleſex* (if in *London*, ſay, at the *Guildhall* of the city of *London* aforeſaid) for default of the jurors, becauſe none came: Therefore let the ſheriff have the bodies of the ſeveral perſons mentioned in the panel annexed to the writ of *Habeas corpora juratorum*. And be it known that the juſtices here in court in this ſame term delivered a writ thereupon to the deputy of the ſheriff of the county aforeſaid, to be executed in form of law, *&c.*

If the trial is to be had at the aſſizes, the form of the *Jurata* is as follows.

For the aſſizes.

Lincoln, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, *&c.* gentleman, in a plea of treſpaſs on the caſe, is reſpited here until on the morrow of *All Souls*, unleſs our lord the king's juſtices, aſſigned to take the aſſizes in the county aforeſaid by form of the ſtatute in that caſe made and provided, ſhall come before on (*the day the aſſizes are to be held*) at (*the place where they are to be held*) in the county aforeſaid, for

for default of the jurors, becauſe none came: Therefore, *&c.* (*as before.*)

When the *Niſi prius* record is prepared, you are to carry it, and the roll whereon you have entered the iſſue, to the proper prothonotary, who on being paid for the entry will mark both the record and roll; then you go to the clerk of the treaſury, who will examine and ſee that the *Jurata* is rightly entered, and ſign and ſeal the record.

No record of Ni. Pri. *to be ſigned before iſſue entered.*

No record of *Niſi prius* is to be ſigned before the iſſue be entered upon the roll. *Mich.* 1654. *Paſ.* 5 *W. & M.*

Iſſues to be entered the ſame term they are joined.

And all iſſues are to be entered of the term they are joined. *Paſ.* 5 *W. & M. Hil.* 11 *Geo.* 1.

In what manner records of Niſi prius *are to be ingroſſed.*

Every record of *Niſi prius* is to be ingroſſed in a fair legible character, and ſo entered on the roll; the beginning of every pleading to be with a new line, and the firſt word in a greater character than the reſt; and in all actions that have diverſe narrs, [*i. e.* counts] notice thereof muſt be given by figures in the margin of ſuch record of *Niſi prius*; and all records of *Niſi prius* that ſhall be ingroſſed in this court are to be of the exact breadth of the rolls of the court, and not broader or leſſer. *Trin.* 29 *Car.* 2.

Within what time they muſt be made up for the aſſizes.

Records of *Niſi prius* for trials at the aſſizes ſhall be ſigned by the reſpective prothonotaries, and ſigned and ſealed by the clerks of the treaſury within the ſpace of three weeks next after the end of every *Hilary*

lary term, and of every *Trinity* term, and not afterwards unleſs by ſpecial order. *Trin.* 29 *Car.* 2.

The clerk of the treaſury ſhall not ſign or ſeal any record of *Niſi prius*, unleſs the ſame ſhall be firſt ſigned or ſtamped by the clerk of the warrants. *Hil.* 2, 3 *Jac.* 2.

No record of Niſi prius *to be ſealed, unleſs ſigned by the clerk of the warrants.*

The form of a Venire facias.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. We command you, that you cauſe to come before our juſtices at *Weſtminſter*, on the morrow of the *Purification* of the bleſſed *Mary*, twelve free and lawful men of the body of your county, each of whom has ten pounds of lands, tenements or rents by the year at leaſt, by whom the truth of the matter may be better known, and who are in no ways of kin, either to *R. K.* the plaintiff, or to *J. W.* late of, *&c.* or to *W. S.* late of, *&c.* [*if the defendant be declared againſt with an* Alias dict', *or as an executor or an adminiſtrator, he muſt be here deſcribed as in the pleadings*] to make a certain jury of the county between the parties aforeſaid, in a plea of taking and unjuſtly deraining cattle [*as the action is*] becauſe as well the ſaid *J. W.* and *W. S.* (*the party who firſt takes the iſſue*) as the ſaid *R. S.* between whom the matter in variance is, have put themſelves upon

Venire facias.

	s.	*d.*
Duty	1	6
Signing	1	4
Seal	0	7
	3	5

upon that jury; and have there the names of the jurors and this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the 23d day of *January* in the fifteenth year of our reign.

Thomſon.

Inſert the cauſe of action in the *Venire* as the caſe ſhall be, thus:

Debt. In a plea of debt.

Caſe. In a plea of treſpaſs on the caſe.

Aſſault. In a plea of treſpaſs and aſſault.

Aſſault and impriſonment. In a plea of treſpaſs, aſſault and impriſonment.

Ejectment. In a plea of treſpaſs and ejectment of farm.

Covenant. In a plea of breach of covenant.

Replevin. In a plea of taking and unjuſtly detaining cattle.

Detinue. In a plea of detaining goods, or writings.

If the defendant carries down the cauſe to be tried by proviſo, the writ runs thus:

By proviſo. And have here the names of the jurors and this writ; provided always, that if two writs ſhall thereupon come to you, that you only return one of them to our ſaid juſtices at *Weſtminſter*, at the time aforeſaid.

You carry this writ to the prothonotary to be ſigned, for which you pay him 1 *s.* 4 *d.* and then to the ſeal office to be ſealed, for which you pay 7 *d.*

When you have this writ returned by the ſheriff, you carry it to the clerk of the jury, and he will make out a writ of *Habeas corpora*

pora juratorum, which you carry to the ſheriff, and he alſo returns.

The form of the Habeas corpora juratorum.

Habeas corpora. Officina brev. 140.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *E.* greeting. We command you, that you have before our juſtices at *Weſtminſter*, from the day of *Eaſter* in 15 days [*the day in bank the next return after the trial*] or before our juſtices aſſigned to take the aſſizes in your county, by force of the ſtatute in that caſe provided, if they ſhall come before, on the day of [*the day the aſſizes are held*] at [*the place where*] in your county, the bodies of the ſeveral perſons named in the panel annexed to this writ, jurors ſummoned in our court before our juſtices at *Weſtminſter*, between *R. K.* plaintiff, and *J. W.* late of, *&c.* and *W. S.* late of, *&c.* of a plea of taking and unjuſtly detaining cattle, [*as the action is*] to make that jury; and have there this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the day of in the year of our reign.

	s.	*d.*
Fi. Ven.	0	4
Ha. Co.	1	8
Duty	1	6
Seal	0	7
	4	1

Bulſtrode.

The

The form of the Subpœna ad teſtificandum.

Subpœna ad teſtificandum.

	s.	d.
Duty	1	6
Signing	1	0
Seal	0	7
	3	1

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command, and firmly injoin you and each of you, that laying all other matters aſide, and notwithſtanding any excuſe, you be in your proper perſons before our juſtices at the aſſizes to be held, at [*the place where the aſſizes are to be held*] in the county of *S.* on [*the day when*] next enſuing, to teſtify and ſpeak the truth in a certain matter of controverſy pending undetermined in our court before our juſtices at *Weſtminſter*, between *A. B.* plaintiff, and *C. D.* late of *E.* in the ſaid county of *S.* gentleman, defendant, in a plea of treſpaſs; [*as the action is*] and this you are not to omit, nor is any one of you to omit, under the penalty on each of you of one hundred pounds. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the day of in the year of our reign.

Borrer

If the trial be to be had in *London*, you ſay thus,—That, *&c.* you be before Sir *John Willes*, knight, our chief juſtice of the bench, at *Guildhall*, *London*, on [*the day of the ſittings*] to teſtify, *&c.*

If in *Middleſex* thus; before Sir *John Willes*, knight, our chief juſtice of the bench at *Weſtminſter*, in the great hall of pleas there, called *Weſtminſter hall*, to teſtify, *&c.*

This *Subpœna* you carry to the proper prothonotary to be ſigned, for which you pay 1*s.* and to the ſeal-office to be ſealed, for which you pay 7*d.* and then you make out tickets for each of the witneſſes in the following form.

Mr. *R. B.*

By virtue of a writ of *Subpœna* to you directed, and herewith ſhewn unto you, you are commanded perſonally to be and appear before his majeſty's juſtices of aſſize [*or the chief juſtice as before directed, according as the caſe is*] at [*the place*] on the day of by of the clock in the noon of the ſame day, to teſtify the truth, according to your knowledge, in a certain cauſe now depending, and there to be tried between *A. B.* plaintiff, and *C. D.* late of in the county of gentleman, defendant, in a plea of treſpaſs [*as the action is*] on the part of the plaintiff [*or defendant, if at his inſtance ſubpœna'd*] and hereof you are not to fail, upon pain of one hundred pounds. Dated the day of in the year of our lord 174 , and in the year of the reign of our ſovereign lord *George* the ſecond, king of *Great Britain*, &c.

L. R. attorney.

Subpœna *ticket.*

Before

Cauſe to be entered with the marſhal.

Before you go to trial you muſt enter your cauſe with the judge's marſhal.

Formerly four days before the day of trial.

Cauſes to be tried in *London* or *Middleſex* ought to be entered in the marſhal's book four days before the day of trial. *Mich.* 1654.

Now two.

But notwithſtanding this rule, and tho' there is none other to the contrary, two days at this time are reckoned ſufficient.

Records to be brought in before the ſittings after term.

Ne recipiatur ſhall be allowed to be entered for the ſittings at *Niſi prius* after every term, unleſs the records of *Niſi prius* and the writs be made up and brought into court on or before the days and ſittings reſpectively. *Hil.* 8 *Geo.* 1.

On circuit writ and record to be entered together.

In every cauſe to be tried in the circuits, the writ and record ſhall be entered together, and no record ſhall be received without the writ. *Trin.* 10 & 11 *Geo.* 2.

On circuit in what time record to be brought and entered.

No writ and record of *Niſi prius* ſhall be received at the aſſizes in any county in *England*, unleſs they ſhall be delivered to, and entered with the marſhal, before the firſt ſitting of the court after the commiſſion-day, except in the counties of *York* and *Norfolk*; and there the writs and records ſhall be delivered to, and entered with the marſhal before the firſt ſitting of the court, on the ſecond day after the commiſſion-day, otherwiſe they ſhall not be received. *Hil.* 14 *Geo.* 2.

Cauſes to be tried in the order entered.

Every cauſe ſhall be tried in the order in which it is ſo entered, without any preference or delay, unleſs it ſhall be made out to the ſatisfaction of the judge in open court, that it

it is impracticable or inconvenient ſo to do, who thereupon may make ſuch order for the trial of the cauſe, ſo put off, as to him ſhall ſeem juſt. *Same rule.*

A liſt of the cauſes, when ſo entered as aforeſaid, ſhall be made by the marſhal, and forthwith fixed up in ſome public place in the *Niſi prius* court, there to remain during the whole time of the aſſizes. *Same rule.* *Liſt of cauſes to be made and hung up.*

If the cauſe be to be tried in *London* or *Middleſex*, you pay, for entering the cauſe with the marſhal, 13*s.* 9*d. viz.* the chief juſtice 10*s.* 9*d.* Marſhal 2*s.* Aſſociate 1*s.* *Entring fee in* London *or* Middleſex.

If the trial be at the aſſizes, the fee for entering the cauſe is but 11*s.* 8*d. viz.* the judge 6*s.* 8*d.* Clerk of aſſize 2*s.* Marſhal 2*s.* Cryer 1*s.* *At the aſſizes.*

If the plaintiff gives notice of trial for the aſſizes, and don't bring the trial on, he can't go down to trial again without new notice, unleſs by conſent or rule of court. *If Plt. don't go to trial at aſſizes, muſt give new notice.*

But in *London* or *Middleſex*, if the plaintiff gives notice of trial for one ſitting, and be not provided to proceed, he may give notice before that ſitting, that he will try it at the next ſitting. *Mich.* 1654. *In* London *or* Middleſex *may give new notice, before the day of ſitting, for the next ſitting.*

The plaintiff cannot continue his notice of trial a ſecond time, *i. e.* he can give ſhort notice of trial but once; but if the full time be given by the notice of continuance the word *continue* will not vitiate the notice. *Plt. can continue his notice but once.*

The plaintiff gave notice of trial for the firſt ſitting within term, then gave notice that he countermanded the notice of trial for the firſt ſitting, and continued it for the ſe- *Can't countermand and continue in the ſame notice.*

cond; the defendant made no defence at the trial, and the plaintiff had a verdict. But on a motion the court ſaid the plaintiff could not countermand and continue in the ſame notice, and ſet the verdict aſide. *Smith* v. *Hough*, *Hil.* 11 *Geo.* 2.

If plt. don't proceed to trial according to notice, nor countermand, he ſhall pay coſts.

In caſe the plaintiff gives notice of trial, and don't go to trial accordingly, the defendant upon motion ſhall have his coſts of attendance, to be taxed by the prothonotary, unleſs the plaintiff countermand his notice in convenient time, or ſhew cauſe to be allowed by the court in excuſe of ſuch coſts. *Mich.* 1654.

Both plt. and def. giving notice of trial, and neither proceeding to trial, each paid coſts.

The defendant gave notice of trial by proviſo, and the plaintiff alſo gave notice of trial; neither went on to trial, or countermanded, and both got rules for coſts for not going on to trial; the prothonotary doubted whether both were intitled to coſts; and the judges were of opinion, that as both ſides gave notice of trial, and neither proceeded to trial, each ſide was intitled to coſts. *Reading* v. *Grafton*, *M.* 13 *Geo.* 1.

Countermand at the aſſizes.

No countermand of trial at the aſſizes ſhall be good unleſs notice be given two days before the commiſſion-day. *Mich.* 5 *Geo.* 1. The commiſſion-day on a *Monday*, a countermand on the *Saturday* held to be regular.

In London *and* Middleſex.

And in *London* or *Middleſex* the countermand muſt be two days before the ſitting for which notice was given. *Antea*, *fol.* 165.

Counterm. after record made a Remanet.

Notice of trial may be countermanded after the record is made a *Remanet*.

Where

Where iſſue is or ſhall be joined, and the laintiff hath neglected or ſhall neglect to ring ſuch iſſue on to be tried, according to e courſe and practice of the court, it ſhall e lawful for the judges at any time after ch neglect, upon motion made in open ourt (due notice having been given thereof) give the like judgment for the defendant in caſes of nonſuit, unleſs the judges ſhall pon juſt cauſe and reaſonable terms allow y further time or times for the trial of ſuch ſue. And if the plaintiff ſhall neglect to y ſuch iſſue within the time or times ſo al-wed; then and in every ſuch caſe the judges hall proceed to give ſuch judgment as afore-id. *Stat.* 14 *Geo.* 2. *c.* 17. *ſ.* 1.

When on default of the plaintiff's going to trial the court ſhall give judgment of nonſuit.

If the plaintiff doth not proceed to try is cauſe in due time, and the iſſue is not en-ered on record, and the roll carried in, a ule muſt be given for the plaintiff to enter he iſſue upon record, (which is a four day ule, excluſive of the day of notice) and in efault thereof a *Non pros* may be ſigned. When the roll is carried in, either in pur-uance of this rule, or without ſuch rule, he defendant may move for judgment, as in he caſe of a nonſuit upon the above act of arliament, and the roll muſt be produced in ourt. When a further time is granted, the ourt appoints a time for the trial, as at the ext aſſizes, or at ſome ſitting in *London* or *Middleſex*, according as where the action is o be tried. If the defendant applies for oſts for not going to trial, purſuant to no-ice, he has made his election, and cannot

Of obtaining judgment, as in caſe of a nonſuit for not proceeding to trial in due time.

cond; the defendant made no defence at the trial, and the plaintiff had a verdict. But on a motion the court ſaid the plaintiff could not countermand and continue in the ſame notice, and ſet the verdict aſide. *Smith* v. *Hough*, *Hil.* 11 *Geo.* 2.

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Where iſſue is or ſhall be joined, and the laintiff hath neglected or ſhall neglect to ring ſuch iſſue on to be tried, according to e courſe and practice of the court, it ſhall e lawful for the judges at any time after ch neglect, upon motion made in open urt (due notice having been given thereof) give the like judgment for the defendant in caſes of nonſuit, unleſs the judges ſhall on juſt cauſe and reaſonable terms allow y further time or times for the trial of ſuch ſue. And if the plaintiff ſhall neglect to y ſuch iſſue within the time or times ſo al-wed; then and in every ſuch caſe the judges all proceed to give ſuch judgment as afore-id. *Stat.* 14 *Geo.* 2. *c.* 17. *ſ.* 1.

When on default of the plaintiff's going to trial the court ſhall give judgment of nonſuit.

If the plaintiff doth not proceed to try s cauſe in due time, and the iſſue is not en-red on record, and the roll carried in, a le muſt be given for the plaintiff to enter e iſſue upon record, (which is a four day le, excluſive of the day of notice) and in efault thereof a *Non pros* may be ſigned. Vhen the roll is carried in, either in pur-ance of this rule, or without ſuch rule, e defendant may move for judgment, as in e caſe of a nonſuit upon the above act of arliament, and the roll muſt be produced in urt. When a further time is granted, the urt appoints a time for the trial, as at the ext aſſizes, or at ſome ſitting in *London* or *Middleſex*, according as where the action is be tried. If the defendant applies for oſts for not going to trial, purſuant to no-ce, he has made his election, and cannot

Of obtaining judgment, as in caſe of a nonſuit for not proceeding to trial in due time.

move for judgment, as in caſe of a nonſuit. Though further time for going to trial hath been given, yet upon reaſonable cauſe it may ſtill be enlarged, notwithſtanding the word peremptory in the rule. Such judgment may be given in an action *Qui tam, &c.* or replevin. Where the excuſe for not proceeding to trial, according to the rules of the court, is a ſufficient excuſe, the court, on giving further time, will not make the plaintiff pay the coſts of the application, but only the coſts for not proceeding to trial.

For trial at ſittings after term, no Ne recipiatur *till after proclamation.*

You cannot, on notice of trial for the ſittings after term, enter a *Ne recipiatur* till after proclamation made for bringing the records in.

Motion to put off a trial when.

Motion to put off a trial, for that a material witneſs is out of the way, and cannot be had at the trial, muſt be made at leaſt two days before the day for which the notice of trial was given.

Not to be granted if the witneſs was in the way when notice of trial given.

But if it appears that this witneſs, who is ſworn to be a material witneſs, went out of town or abroad beyond ſea after the notice of trial was given, the court will not put off the trial for it; the defendant might have ſubpœna'd him in time.

Party applying for a ſpecial jury to pay the whole expence;

and not allowed more than for a common jury.

The perſon, or party, who ſhall apply for a ſpecial jury, ſhall not only bear and pay the fees for ſtriking ſuch jury, but ſhall alſo pay and diſcharge all the expences occaſioned by the trial of the cauſe by ſuch ſpecial jury, and ſhall not have any farther or other allowance for the ſame, upon taxation of coſts, than ſuch perſon or party would be intitled

unto, in caſe the cauſe had been tried by a common jury; unleſs the judge, before whom the cauſe is tried, ſhall, immediately after the trial, certify in open court under his hand, upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury. *Stat.* 24 *Geo.* 2. *c.* 18. *Unl[illegible]*

No perſon who ſhall ſerve upon a ſpecial jury, or be returned, ſhall be allowed or take for ſuch ſerving on any ſuch jury, more than the judge who tries the cauſe ſhall think juſt and reaſonable, not exceeding 1 *l.* 1 *s.* except in cauſes wherein a view hath been directed. *Same ſtat.* *What allowance ſuch jury for ſerving.*

Every *Venire* for the trial of any iſſue in any action or information, upon any penal ſtatute, ſhall be awarded of the body of the proper county where ſuch iſſue is triable. *Same ſtat.* Venire *on a penal ſtat to be* de corpore com'.

On trials at bar, which are to be moved for, the plaintiff's attorney muſt before the eſſoin-day of the term, in which the cauſe is appointed to be tried, give notice to the chief prothonotary or his ſecondary, of the day on which ſuch cauſe is to be tried, that the ſame may be put down in the court-book; and in caſe of neglect, and without motion and ſpecial direction of the court, ſuch cauſe ſhall not be tried that term. *Hil.* 9 *Ann.* *On trials at bar, plt's attorney to give notice of the day to chief prothonotary.*

On trials at bar, the lord chief juſtice and the other judges are to have copies of the iſſues in ſuch cauſes delivered to them four days before the time appointed for trial. *Mich.* 3 *Geo.* 2. *On trials at bar, judges to have copies of the iſſues 4 days before trial.*

Clerks of aſſize and aſſociate to return Poſtea's,

Every clerk of aſſize, and the aſſociate to the lord chief juſtice, ſhall make returns of *Poſtea's* upon records iſſuing out of this court, whereupon any proceedings have been by virtue of any writ of *Niſi prius*, *Diſtringas*, or *Habeas corpora juratorum*, and cauſe the ſame to be delivered to the reſpective prothonotaries, upon the *Quarto die poſt* of the return of the writ of *Niſi prius* in bank, under the penalty of 20*l.* And that all excuſes may be taken away, the reſpective clerks of aſſize and aſſociate at the trial ſhall take the fees due to them reſpectively for the return of every ſuch *poſtea*. *Paſch.* 1 *Jac.* 2.

After the trial is over, and the record is returned with the *poſtea* ingroſſed, you get the *poſtea* ſtamped with a double half-crown ſtamp, and apply to the prothonotary to tax your coſts, and then deliver the record and *poſtea* to the clerk of the judgments, who continues the ſame on the roll, and awards judgment.

Poſtea *to be left with clerk of the judgments,*

Where final judgment ſhall be ſigned upon a *poſtea*, the *poſtea* ſhall immediately be left with the clerk of the judgments of the prothonotary, and ſhall not afterwards be taken out of the office without leave of the court. *Trin.* 13 *Geo.* 2.

Of ſpecial verdicts.

In caſe a ſpecial verdict be found, the plaintiff's attorney muſt enter the proceedings to the end of the ſpecial verdict on record, and deliver it to the ſecondary in court, and get a ſerjeant to move for a *Concilium*, or day for argument, then draw up the

the rule, and ſerve it on the defendant's attorney.

In cauſes entered in the court-book for argument at the bar on ſpecial verdicts or demurrers, the attornies concerned in the cauſe ſhall deliver true copies of the record to the reſpective juſtices of the court, by the ſpace of one week at leaſt next before the day appointed for ſuch argument; namely, the attorney for the plaintiff, one copy thereof to the lord chief juſtice, and another to the ſenior judge; and the attorney for the defendant like copies to each of the other two juſtices. *Paſch.* 27 *Car.* 2. *Paper-books on ſpecial verdicts or demurrers how to be delivered.*

No arguments by counſel on either ſide ſhall be heard at the bar, until books be delivered to all the judges. *Same rule.* *No argument till books delivered.*

In caſe the attorney of either party ſhall not deliver books as he ought; then if the attorney on the other ſide, for expediting his client's cauſe, will deliver books to all the judges three days at the leaſt before the argument, counſel ſhall be heard on his client's behalf, at the day appointed, and the attorney delivering books as aforeſaid ſhall be reimburſed the charges of delivering the two books, which ought to have been delivered by the attorney of the adverſe party, which charges the ſaid attorney ſhall be bound to pay upon the demand thereof. *Same rule.* *If either neglect, the other ſide may deliver all the books.* *And be reimburſed by the attorney making default.*

If the charges of delivering the ſaid two books ſhall not be paid before judgment ſhall be given in the cauſe, the charges of delivering the ſaid books ſhall be allowed upon taxing coſts, and in that caſe the attorney *If not paid before judgment, to be allowed in coſts.*

ſhall not be compelled to pay the ſaid coſts; but if no coſts are to be taxed in the caſe, then the attorney making default in delivering of the books as aforeſaid, ſhall be compelled to pay the charges of the copies ſo delivered by the attorney of the adverſe party, by attachment or otherwiſe, as the court ſhall think fit. *Same rule, vide poſtea.*

If no coſts, attachment againſt attorney making default.

Motion in arreſt of judgment, when.

A motion in arreſt of judgment muſt be made within the firſt four days, *i. e.* before, or on the appearance day of the return of the *Habeas corpora juratorum.*

Notice, if on the laſt day of term.

If the motion be on the laſt day of term, the party, who moves in arreſt of judgment, muſt produce an affidavit, that he has given notice of his motion to the other ſide.

Not after motion to ſet aſide verdict; unleſs, &c.

After a motion in arreſt of judgment the party can't move to ſet aſide the verdict, unleſs it be upon a matter diſcloſed after the motion in arreſt of judgment, and the motion to ſet aſide the verdict be made before judgment pronounced.

Verdict ſet aſide for exceſſive damages.

Verdicts have been frequently ſet aſide for exceſſive damages, but never for ſmallneſs of damages.

Motion for new trial, when.

A motion for a new trial can't be made after the appearance-day of the return of the *Habeas corpora juratorum*, unleſs the foundation of the motion be ſome matter diſcovered afterwards.

Seldom, when iſſue lay on defendant.

Where the iſſue lay on the defendant, as *Solvit ad diem*, *Son aſſault*, &c. and the defendant's witneſſes have been examined, the court ſeldom grants a new trial.

In ejectment, where a verdict is for the defendant, it is not uſual to grant a new trial, becauſe the plaintiff may bring a new ejectment, and no other diſadvantage happens to him; but where the verdict is for the plaintiff, a new trial is often granted; for then the conſequence of not granting a new trial is the alteration of the poſſeſſion of the premiſſes. *Seldom in ejectment, if verdict* pro D. aliter, *if* pro Q.

When final judgment is obtained, the party is to proceed to execution; of which ſee hereafter.

As we ſpoke of iſſues triable by juries, we ſhall ſay ſomething of iſſues triable by the judges, or by record, as on demurrers, and pleas of *Nul tiel record.*

Of demurrers.

AND the ſaid *W.* by *A. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid declaration in form aforeſaid made and declared, and the matter therein contained, are not ſufficient in the law for the ſaid *S.* to have or maintain his ſaid action againſt him the ſaid *W.* and that he the ſaid *W.* hath no need, nor is he obliged by the law of the land to anſwer the ſaid declaration in manner and form aforeſaid made and declared: And this he is ready to verify: Wherefore for want of a ſufficient declaration in this behalf, the ſaid *W.* prayeth judgment, and that the ſaid *S.* may be barred from *General demurrer to a declaration.*

from having his ſaid action againſt him the ſaid *W.* &c.

Joinder. And the ſaid *S.* inaſmuch as he hath above declared ſufficient matter in the law to have and maintain his ſaid action againſt the ſaid *W.* which he is ready to verify; which ſaid matter the ſaid *W.* hath not denied, or given any anſwer thereto, but intirely refuſeth to admit the verifying the ſame; the ſaid *S.* prayeth judgment, and his damages by occaſion of the premiſſes to be adjudged to him, *&c.*

Concilium. And becauſe the juſtices here will adviſe themſelves of and upon the premiſſes before they give their judgment thereon, day is given to the ſaid parties here from the day of St. *Martin* in fifteen days to hear their judgment, for that the ſaid juſtices here are not yet adviſed thereof, *&c.*

3 Lev. 130. *Special demurrer to a writ and declaration, at the ſuit of any attorney.* And the ſaid *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and craveth oyer of the ſaid writ of our lord the king of privilege; and it is read to him in theſe words, *to wit*, *George* the ſecond, *&c.* [ſetting forth the whole writ *in hæc verba*] Witneſs Sir *Robert Eyre*, knight, at *Weſtminſter*, the third day of *July*, *&c.* which being read and heard, the ſaid *W.* prayeth judgment of the ſaid writ and declaration aforeſaid of him the ſaid *W.* becauſe he ſaith, that the ſaid writ, and the declaration thereupon aforeſaid, in manner and form aforeſaid made and declared, and the matter in them contained, are not ſufficient in the law for the ſaid *W.* to have and

Oyer of the writ.

maintain his action aforeſaid againſt him the ſaid *R.* to which ſaid writ and declaration in manner and form aforeſaid made and declared he hath no need, nor is he by the law of the land held or obliged, in any manner to anſwer: And this he is ready to verify; wherefore, and for want of a ſufficient writ and declaration in this behalf, the ſaid *R.* prayeth judgment, and that the ſaid *W.* from his action aforeſaid may be debarred, *&c.* and for cauſes of demurrer in law in this behalf he the ſaid *R.* according to the form of the ſtatute in ſuch like caſes made and provided, ſheweth to the court theſe following; that is to ſay, for this, that it appeareth to this court, that the ſame writ of our ſaid lord the king of privilege was had and ſued out upon the third day of *July* in the eighth year of the reign of our ſaid lord the king, which day of ſuing out thereof was before the day on which the ſaid *W.* has in his ſaid declaration thereupon alledged and declared, that the ſaid treſpaſſes, aſſaults, batteries, woundings and impriſonments, charged upon him the ſaid *R.* in and by the ſaid declaration, were done and committed; and alſo for this, that between the writ and declaration are diverſe variances; and alſo for this, that the ſaid declaration in form aforeſaid made and declared is in itſelf repugnant, inſenſible, contradictory, and wanteth form, and ſo forth; and hereupon the ſaid *R. D.* demandeth the aforeſaid *W. O.* to join in demurrer with him the ſaid *R.* And hereupon a day is given by the court of

Writ teſted before the cauſe of action.

Variance, &c.

Day for plaintiff to join in demurrer.

our

our ſaid lord the king of the bench here, to the ſaid *W.* before his majeſty's juſtices at *Weſtminſter*, until next after to join in the demurrer in law with the ſaid *R.* And the ſaid *W.* at the ſame day being ſolemnly required came not, neither is his writ of our ſaid lord the king of privilege aforeſaid againſt the ſaid *R.* further proſecuted, but he made default: Therefore it is conſidered, that the ſaid *W.* take nothing by his ſaid writ, but that he and his pledges to proſecute, to wit, *J. D.* and *R. R.* be thereof in mercy, *&c.* and that the ſaid *R.* do go thereof without day, *&c.* And further it is conſidered by the court here, that the ſaid *R.* recover againſt the ſaid *W.* 3*l.* 16*s.* 8*d.* for his expences and coſts by him about his defence in this part ſuſtained, to the ſaid *R.* by the court here, according to the form of the ſtatute in ſuch caſe lately made and provided, adjudged, *&c.* and that the ſaid *R.* have his execution for the ſame, *&c.*

Plaintiff makes default.

Judgment againſt the plaintiff.

And the ſaid *C.* ſaith, that the aforeſaid plea of the ſaid *F.* above pleaded in bar, is not ſufficient in law to bar him the ſaid *C.* from his ſaid action againſt the ſaid *F.* and that he the ſaid *C.* hath no need, nor is bound by the law of the land, to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore for default of a ſufficient plea in this behalf the ſaid *C.* prayeth his ſaid debt, together with his damages by occaſion of detaining that debt, to be adjudged to him, *&c.*

General demurrer to a plea.

And

And the ſaid *F.* for that he hath above alledged ſufficient matter in law to bar the ſaid *C.* from having his ſaid action againſt him the ſaid *F.* which he is ready to verify, which ſaid matter the ſaid *C.* hath not denied, nor any ways anſwered thereunto, but wholly refuſeth to admit the verification thereof, prayeth judgment, and that the ſaid *C.* may be barred from having his ſaid action, *&c.* And becauſe the juſtices, *&c.* *Joinder.*

And the ſaid *J. S.* and *M.* by *C. B.* their attorney, come and defend the force and injury, when, *&c.* and pray judgment of the ſaid declaration: Becauſe they ſay, that the ſaid declaration and the matter therein contained are not ſufficient in law to maintain the action of the ſaid *D.* againſt them the ſaid *J. S.* and *M.* to which ſaid declaration the ſaid *J. S.* and *M.* have no need, nor are they obliged by the law of the land to anſwer; and this they are ready to verify: Wherefore for want of a ſufficient declaration in this caſe, the ſaid *J. S.* and *M.* pray judgment of the ſaid declaration, and that the ſame may be quaſhed, *&c.* And the ſaid *J. S.* and *M.* according to the ſtatute ſhew the cauſes of demurrer following, *to wit*, that it is not alledged in the ſaid declaration how, or by whom letters of adminiſtration were granted, nor is it alledged that adminiſtration was ever granted to the ſaid *J. S.* and *M.* And alſo that the ſaid declaration is uncertain and wanteth form. *Demurrer to declaration for not alledging that adminiſtration was granted to defendant.*

And the ſaid *E. H.* ſaith, that the ſaid plea of him the ſaid *F. S.* in manner and form *Special demurrer to a plea of* Nil debet *to a bail bond.*

form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *F.* and that he the ſaid *E.* hath no need, nor is he obliged by the law of the land to anſwer the ſaid plea of him the ſaid *F.* in manner and form aforeſaid above pleaded; and this he is ready to verify: Wherefore for want of a ſufficient plea in this behalf the ſaid *E.* prayeth judgment, and that his ſaid debt, together with his damages by reaſon of the detaining of that debt, may be adjudged to him, *&c.*

Cauſes of demurrer. And for cauſes of demurring in law in this behalf, the ſaid *E.* according to the form of the ſtatute in ſuch caſes made and provided, ſheweth to the court here theſe cauſes following; (that is to ſay) for this, that the ſaid *F. S.* hath not by his ſaid plea particularly denied nor confeſſed the ſaid deed in the ſaid declaration alledged; and alſo for this, that the ſaid *F.* is eſtopped by the ſaid deed to ſay, that he doth not owe the money in the ſaid deed mentioned, and ought to have ſhewn by his plea how he is diſcharged from the ſame.

Joinder. And the ſaid *F. S.* ſaith, that the ſaid plea by him the ſaid *F.* in manner and form aforeſaid pleaded, and the matter therein contained, are good and ſufficient in the law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *F.* which ſaid plea, and the matter therein contained, he the ſaid *F.* is ready to verify; and becauſe the ſaid *E.* to the ſaid plea hath not anſwered, nor the

ſame

ſame hitherto in any manner gainſaid, he the ſaid *F.* doth pray judgment, and that the ſaid *E.* may be barred from having againſt him the ſaid *F.* his action aforeſaid, *&c.*

Judic. pro Q.

And the ſaid *A.* ſaith, that the ſaid plea of the ſaid *J.* above by replying pleaded, and the matter therein contained are not ſufficient in the law for the ſaid *J.* to have and maintain his ſaid action againſt him the ſaid *A.* and that he hath no need, nor is he obliged by the law of the land to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore for defect of a ſufficient plea in this behalf the ſaid *A.* prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action againſt him the ſaid *A.* &c. *Demurrer to a replication.*

And the ſaid *J.* for that he has above by replying alledged ſufficient matter in the law, for him the ſaid *J.* to have and maintain his ſaid action againſt the ſaid *A.* which the ſaid *J.* is ready to verify; which matter the ſaid *A.* doth not deny, nor any ways anſwer thereto, but intirely refuſeth to admit the verifying thereof; the ſaid *J.* as before prayeth judgment, and his ſaid debt, together with his damages by occaſion of detaining that debt, to be adjudged to him, *&c.* And becauſe, *&c.* *Joinder.*

And the ſaid *J.* ſaith, that the ſaid plea of the ſaid *M.* above by rejoining pleaded, and *Demurrer to a rejoinder.*

and the matter therein contained, are not ſufficient in the law to bar the ſaid *J.* from having his ſaid action againſt the ſaid *T.* and that he hath not need, nor is obliged by the law of the land to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore the ſaid *J.* as before, prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.*

Finder. And the ſaid *T.* for that the matter aforeſaid by him above by rejoining alledged (which he is ready to verify) is ſufficient in the law to bar the ſaid *J.* from having his ſaid action againſt him the ſaid *T.* which ſaid matter the ſaid *J.* hath not denied, nor any ways anſwered thereto, but intirely refuſeth to admit the verifying the ſame, prayeth judgment, and that the ſame *J.* may be barred from having his ſaid action againſt him, *&c.*

3 *Lev.* 187.

Of going to argument on demurrer. When demurrer is joined, the plaintiff's attorney makes up the demurrer book, and delivers a copy of it on double penny paper to the defendant's attorney, who muſt pay him for it after the rate of 4*d. per* ſheet, beſides the duty, and alſo for entering his pleadings and warrant of attorney; then the plaintiff's attorney enters the whole proceedings on the roll, and having delivered it to the ſecondary gets a ſerjeant to move for a *Concilium*, or day for arguing the demurrer, and the ſecondary draws up a rule accordingly, which

which muſt be ſerved on the defendant's attorney, and the demurrer put down in the book for argument. It will be irregular to move for a *Concilium* before the paper book is delivered to defendant's attorney.

As to delivering the paper-books, *vide antea* fol. *Rule, Paſ.* 27 *Car.* 2.

As to delivering the paper-books.

The plaintiff's attorney ſhall deliver all the demurrer books to the lord chief juſtice and the reſt of the judges, and the defendant's attorney ſhall pay the plaintiff's attorney for two of the ſaid books two days at leaſt before the day appointed for arguing ſuch demurrer, and the defendant ſhall not be heard by his counſel when the cauſe comes on to be argued, unleſs the ſaid two books be accordingly paid for. *Mich.* 6 *Geo.* 2.

Where in caſes of demurrer deft's attorney obliged to accept notice of inquiry.

Where the defendant demurs to the declaration, his attorney ſhall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and where the defendant pleads ſuch a dilatory plea that the plaintiff is obliged to demur, the defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry on the back of ſuch demurrer. *Trin.* 10 *Geo.* 1.

In judges books counſels names, number roll, and day of argument to be ſet down.

Per Curiam: For the future, in all demurrer books delivered to the judges, let the counſels names be inſerted who ſigned the pleadings, and let the number roll, and day of argument be ſet down on the outſide of each book. *Trin.* 17 & 18 *Geo.* 2.

Proceedings on iſſues upon Nul tiel record.

Declaration in debt on a judgment.

London, to wit; *R. D.* late of *London*, carpenter, was ſummoned to anſwer unto *L. P.* of a plea, that he render to him 62*l.* of lawful money of *Great Britain*, which he oweth him and unjuſtly detaineth, *&c.* and whereupon the ſaid *L.* by *J. C.* his attorney ſaith, that whereas the ſaid *L.* heretofore, that is to ſay, in *Eaſter* term in the fourth year of the reign of his preſent majeſty king *George* the ſecond, in his ſaid majeſty's court, before Sir *Robert Eyre*, knight, and his brethren, then his majeſty's juſtices of the bench here, at *Weſtminſter* in the county of *Middleſex*, by the conſideration of the ſaid court recovered againſt the ſaid *R.* 62*l.* which were adjudged to the ſaid *L.* in the ſaid court for his damages which he had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings to the ſaid *L.* by the ſaid *R.* then lately made, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted, as by the record and proceedings thereof now remaining in his majeſty's ſaid court here more fully and at large appeareth, which ſaid judgment ſtill remaineth in its full ſtrength, force and effect, not reverſed, vacated, annulled, diſcharged or ſatisfied; and the ſaid *L.* hath as yet

et obtained no ſatisfaction of the aforeſaid
dgment, whereby an action hath accrued
the ſaid *L.* to demand and have of the
id *R.* the ſaid 62 *l.* yet the ſaid *R.* altho'
ften requeſted, hath not rendered the ſaid
2 *l.* or any part thereof to the ſaid *L.* but
render the ſame to him hitherto hath de-
ied, and ſtill doth wholly deny, to the da-
age of the ſaid *L.* 20 *l.* And thereof he
ingeth ſuit, *&c.*

And the ſaid *R.* by *W. W.* his attorney *Plea* Nul tiel record.
ometh and defendeth the force and injury,
hen, *&c.* and ſaith, that the ſaid *L.* ought
ot to have his ſaid action againſt him, be-
auſe he ſaith, that there is not any ſuch re-
ord of recovery of damages aforeſaid againſt
im the ſaid *R.* in his ſaid majeſty's court,
efore Sir *Robert Eyre*, knt. and his bre-
hren, his majeſty's juſtices of the common
ench, as the ſaid *L.* in his declaration hath
lledged; and this he is ready to verify:
Therefore he prayeth judgment, if the ſaid
. ought to have his ſaid action thereof
gainſt him, *&c.*

And the ſaid *L.* ſaith, that he by any *Replication.*
hing before alledged ought not to be barred
rom having his aforeſaid action maintained
gainſt the ſaid *R.* becauſe he ſaith, that
here is ſuch a record of recovery againſt
im the ſaid *R.* in his ſaid majeſty's court of
ommon bench here remaining, as by the
aid declaration is above alledged; and this
e is ready to verify by the ſaid record, and
he prayeth, that the ſaid record may be in-
ſpected and ſeen by the juſtices here, *&c.*

And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is ſaid by the ſaid court here to the ſaid *L.* that he have the ſaid record here on

The ſame day is given to the ſaid *R.* here, *&c.*

Rule for judgment on bringing record into court.

On bringing the record into court on the day given, the ſecondary of courſe draws up a rule for judgment *Niſi cauſa* within four days, and at the expiration of that time the ſecondary certifies at the foot of the rule that no cauſe hath been ſhewn, after which judgment may be ſigned.

Judgment.

The clerk of the judgments enters up the judgment.

The plaintiff muſt bring in the record at the day he has given himſelf, or the court will not receive it.

Recovery in a former action pleaded in bar.

And the aforeſaid *J.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after making the ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, and before the day of obtaining the original writ of the ſaid *T. to wit*, in the term of St. *Michael* in the preſent ——— year of the reign of the now king before Sir *Robert Eyre*, knight, and his companions, juſtices of our ſaid lord the king of the bench at *Weſtminſter*, by bill, without the writ of the ſame king, and by the conſideration of the ſaid court, recovered againſt the ſame *J.* 60*l.* for his damages which he had ſuſtained as well by reaſon

ſon of the not performing the ſeveral promiſes and aſſumptions in the ſaid declaration above mentioned, as for his coſts and charges by him in his ſaid ſuit in that behalf laid out and expended, as by the record and proceſs thereof in the ſaid court of our ſaid lord the king of the bench at *Weſtminſter* fully appeareth. And the ſaid *J.* averreth, that the promiſes and aſſumptions in the ſaid record mentioned, and the promiſes and aſſumptions in the ſaid declaration above mentioned, are the ſame promiſes and aſſumptions, and not other or different; and this the ſaid *J.* is ready to verify: Whereupon he prayeth judgment, if the ſaid *T.* ought to have or maintain his ſaid action againſt him, *&c.*

And the aforeſaid *T.* ſaith, that he by any thing alledged by the ſaid *J.* in the above pleading ought not to be precluded from having his action aforeſaid againſt the ſaid *J.* becauſe he ſaith, that there is not any ſuch record of the ſaid recovery againſt the ſaid *J.* at the ſuit of the ſaid *T.* as he the ſaid *J.* above in pleading hath alledged; and this he is ready to verify: Whereupon he prayeth judgment, and that his ſaid damages may be adjudged to him, *&c.* *Replication,* Nul tiel record.

And the aforeſaid *J.* ſaith, that there is a record of the ſaid judgment as the ſaid *J.* above in pleading hath alledged; and this he is ready to verify by the ſaid record, and prayeth, that the ſaid record may be ſeen and inſpected by the juſtices here. And becauſe the ſaid record is not now had here, it is commanded the ſaid *J.* that he have here the *Rejoinder.* *Day given to produce the record.*

ſaid record in (*the day*) at his peril. The ſame day is given as well to the ſaid *T.* as to the ſaid *J.* here, *&c.* At which day come here as well the ſaid *T.* as the ſaid *J.* by their ſaid attornies, and the ſaid *J.* hath not here the ſaid record, but maketh default; whereby it ſufficiently appeareth to the ſaid juſtices here, that there is not any ſuch record of the ſaid recovery, as the ſaid *J.* hath above alledged: Wherefore, *&c.* (*Judgment.*)

Def. fails in producing the record.

Q. If there was not here a complete iſſue upon the replication, and the rejoinder unneceſſary.

That the plt. is outlawed in another court.

And the ſaid *T.* by *F. K.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *J.* ought not to have his aforeſaid action againſt him the ſaid *T.* thereon, becauſe he ſaith, that one *C. T.* heretofore (that is to ſay) in *Eaſter* term in the fifth year of the reign of his preſent majeſty, by an original writ impleaded the ſaid *J.* by the name of *J. H.* late of *London*, gent. in the court of the ſaid now king, before the king himſelf (the ſaid court then and ſtill being at *Weſtminſter* in the county of *Middleſex*) in a plea of treſpaſs, and the ſaid *J.* becauſe he did not appear in his ſaid majeſty's court before the ſaid king to anſwer unto the ſaid *C.* in the aforeſaid plea, according to the law and cuſtom of this realm, was put in exigent to be outlawed in *London*; and for that reaſon afterwards, *to wit*, on *Monday* next before the feaſt of the purification of the bleſſed virgin *Mary*

in the ſixth year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king before the ſaid king himſelf, was outlawed in due form of law at the ſuit of the ſaid *C.* in the ſaid plea, and ſtill remaineth outlawed, as by the record and proceedings thereof in his ſaid majeſty's court, before the king himſelf at *Weſtminſter* aforeſaid returned, and now there remaining, may more fully appear; and this he is ready to verify by the ſaid record: Wherefore he prayeth judgment, whether the ſaid *J.* ought to have his ſaid action therefore againſt him.

Replication, Nul tiel record.

And the ſaid *J.* ſaith, that he, by any thing by the ſaid *T.* in his plea above alledged, ought not to be barred from having his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of outlawry in his ſaid majeſty's court before the king himſelf, as the ſaid *T.* by his ſaid plea hath alledged; and this he is ready to verify in ſuch manner as the court ſhall award. And the ſaid *T.* is commanded that he have the ſaid record here on the morrow of the aſcenſion of our lord at his peril; and the ſame day is given to the ſaid *J.* here, *&c.* At which day here come as well the ſaid *J.* as the ſaid *T.* by their attornies aforeſaid; and the ſaid *T.* hath not here the ſaid record, but maketh default thereof: Wherefore, *&c.*

Day given to produce the record.

Deft. makes default.

Notice of inquiry on iſſue of Nul tiel record.

Upon an iſſue of *Nul tiel record*, notice of executing a writ of inquiry may be given upon the iſſue-book, as well as upon a joinder in demurrer. *Long* againſt *Lingwood*, *Hil.* 8 *Geo.* 2.

When a four day rule on issue of Nul tiel record *is necessary.*

Where the judgment upon an issue of *Nul tiel record* is final, the rule should be, unless cause within four days, that the defendant may have that time to move in arrest of judgment; but where the judgment is interlocutory, that reason fails, and a two day rule hath been held sufficient, because the defendant may move in arrest of judgment after the inquiry executed. Where the proceeding is by original, and a general return day is given to bring in the record, the defendant ought to be called to bring in the record at the rising of the court on that day, and if he fail, the rule for judgment should be, unless cause on the appearance day of that return, and the record may be brought in on that or any other intervening day. But where the proceedings are by bill against an attorney, and the day given to bring in the record is a day certain, the record cannot be brought in after that day, but on that day at the rising of the court, the defendant ought to be called to bring in the record, and if he fail, the court will appoint the day to be inserted in the rule for judgment *Nisi causa.*

Difference where proceedings by original, and by bill.

Of judgments by default.

Of entering judgment by default.

IF the defendant does not plead by the time limited by the rules of the court (for which see before, *fol.* &c.) the plaintiff may sign his judgment with the prothonotary, in whose office the proceedings are entered. In debt the judgment is final, and

and ſigned on a double half-crown ſtamp; but in treſpaſs, treſpaſs on the caſe, *&c.* the firſt judgment is only interlocutory and not final, till the inquiry is returned, when you get the inquiſition ſtamped with a double half-crown ſtamp, and then the prothonotary taxes your coſts *de incremento*, which is called ſigning the final judgment.

In entering your judgment you leave about an inch margin, and begin about ten inches from the top of the roll, the declaration thus:

London, *to wit*, *C. D.* late of *London*, merchant, was attached to anſwer *A. B.* in a plea of treſpaſs on the caſe; and whereupon, *&c.* (*to the end of the declaration*) And thereof he bringeth ſuit, *&c.* *Judgment in debt.*

Then beginning a new line, you enter the judgment in the following manner:

And the ſaid *C. D.* by *C. H.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or precluſion of the action of the ſaid *A. B.* by which the ſaid *A. B.* remaineth thereupon undefended againſt the ſaid *C.* Therefore it is conſidered that the ſaid *A.* recover againſt *By* Nil dicit. *Judgment ſigned* 5 May 1739.

By the ſtatute 29 *Car.* 2. *c.* 3. *ſ.* 14. Any judge or officer of any of the courts at *Weſtminſter*, who ſhall ſign any judgment, ſhall at the time of ſigning it (without fee) ſet down the day and year of his ſo doing upon the paper book, docket or record, which day and year ſhall be ſet down on the margin of the roll of the record where ſuch judgment ſhall be entered. *Day of ſigning judgment to be ſet down.*

the ſaid *C.* his ſaid debt, and his damages by occaſion of the detaining the ſaid debt to 53 *s.* by the court here adjudged to the ſaid *A. B.* by his aſſent. And the ſaid *C.* in mercy, *&c.*

Mercy.

Cognovit actionem *in debt.*

And the ſaid *B.* by *C. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he cannot deny the action of the ſaid *E.* nor but that he oweth to the ſaid *E.* the ſaid 10 *l.* in manner and form as the ſaid *E.* hath above declared againſt him: It is therefore conſidered that the ſaid *E.* recover againſt the ſaid *B.* his ſaid debt, and his damages by occaſion of the detaining that debt to 53 *s.* by the court here adjudged to the ſaid *E.* by his aſſent, and the ſaid *B.* in mercy, *&c.*

Judgment ſigned day of 1739.

Cognovit actionem *in debt on a bond.*

And the ſaid *T.* by *L. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he cannot deny but that the ſaid writing obligatory is the deed of him the ſaid *T.* nor but that he oweth to the ſaid *W.* the ſaid 10 *l.* in manner and form as the ſaid *W.* hath above declared againſt him: It is therefore conſidered, *&c. as before.*

Judgment by Non ſum informatus.

And the ſaid *L.* by *T. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *L.* of any anſwer to be given for the ſaid *L.* to the ſaid *R.* in the plaint aforeſaid; and he ſaith nothing elſe thereupon; by which the ſaid *R.* remaineth thereupon undefended againſt the ſaid *L.* It is therefore conſidered, *&c.*

And the ſaid *C. D.* by *E. T.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the action of the ſaid *G.* by which the ſaid *G.* remaineth thereupon undefended againſt the ſaid *C.* For which the ſaid *E.* ought to recover againſt the ſaid *C.* his damages by occaſion of the premiſſes. But becauſe it is not known what damages the ſaid *G.* hath ſuſtained by occaſion of the premiſſes, therefore it is commanded to the ſheriff, that by the oath of good and lawful men of the county aforeſaid he diligently inquire what damages the ſaid *G.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon make he make appear to the juſtices of our lord the king at *Weſtminſter*, on the morrow of the holy *Trinity*, under his ſeal, and the ſeals of them by whoſe oath he ſhall make the ſaid inquiſition. As to continuance *vide* 2 *D. A.* 153. *p.* 7. *Yel.* 97. *Noy* 129. *Cro. Eliz.* 144, 774. 11 *Co.* 6. *b. Roll. Rep.* 30, 31. *Cro. Eliz.* 75. 1 *Roll. Rep.* 31. 1 *Sid.* 16.

Nil dicit *in caſe*.

Inquiry awarded.

If the action be in caſe *Sur aſſumpſit*, inſtead of ſaying [*by occaſion of the premiſſes*] ſay [*by occaſion of the not performing the premiſes and undertakings aforeſaid.*]

If in treſpaſs, ſay [*by occaſion of the treſpaſs aforeſaid.*]

If in treſpaſs and aſſault, ſay [*by occaſion of the treſpaſs and aſſault aforeſaid.*]

If

If in treſpaſs, aſſault and impriſonment, ſay [*by occaſion of the treſpaſs, aſſault and impriſonment aforeſaid.*]

In covenant ſay [*by occaſion of breaking the ſaid covenant.*]

If the defendant, after having pleaded *per minas* or *per dures*, and iſſue taken thereon, is willing to confeſs the action, the entry of ſuch confeſſion is to be in this manner.

Relicta veri-ficatione *and* Cognovit actionem *after* per minas *pleaded.*

At which day here cometh as well the ſaid *A.* as the ſaid *B.* by their attornies aforeſaid, and thereupon the ſaid *B.* relinquiſhing his averment aforeſaid above by him pretended ſaith, that he cannot deny the action of the ſaid *A.* thereupon, nor but that he at the time of making the ſaid writing was of his own right at large, and made the ſaid writing to the ſaid *A.* of his mere and free will, and not for fear of threatnings, as he the ſaid *A.* hath above alledged: Therefore it is conſidered, *&c. as before.*

If the defendant confeſs the action after *Non eſt factum* pleaded, and iſſue joined, the entry is thus:

The like after Non eſt factum *pleaded.*

At which day here cometh as well the ſaid *R.* as the ſaid *S.* by their attornies aforeſaid, and hereupon the ſaid *S.* relinquiſhing his averment aforeſaid above by him pretended, ſaith, that he cannot deny the ſaid action of the ſaid *R.* nor but that the ſaid writing is the deed of him the ſaid *S.* nor but that he oweth the ſaid *R.* the ſaid 100*l.* in manner and form as the ſaid *R.* above complaineth againſt him: Therefore it is conſidered, *&c.*

And the ſaid *B. C.* by *D. E.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *B.* of any anſwer for the ſaid *B.* to be given to the ſaid *E.* in the plaint aforeſaid; for which the ſaid *E.* ought to recover his damages by occaſion of the premiſſes againſt the ſaid *B.* But becauſe it is unknown what damages the ſaid *E.* hath ſuſtained by occaſion of the premiſſes, it is commanded to the ſheriff, that by the oath of twelve good and lawful men of his bailiwic he diligently inquire what damages the ſaid *E.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon take he make appear to the juſtices of our lord the king at *Weſtminſter*, in five weeks from the day of *Eaſter*, under his ſeal, and the ſeals of, *&c.*

Non ſum informatus in caſe.

Inquiry awarded.

The clerk of the judgments enters up the final judgment. See his duty under the head of the officers of the court, *fol.* 10.

No bailiff or ſheriff's officer ſhall preſume to exact or take from any perſon being in his cuſtody any warrant to acknowledge a judgment but in the preſence of an attorney for the defendant, which attorney ſhall then ſubſcribe his name thereunto; which ſaid warrant ſhall be produced when the ſaid judgment ſhall be acknowledged. *Hil.* 14, 15 *Car.* 2.

No warrant to confeſs a judgment to be taken of a priſoner, unleſs an attorney on his behalf be preſent.

No attorney ſhall enter or acknowledge, or cauſe to be entered or acknowledged, any judgment

judgment by colour of any warrant gotten from any defendant being under arreſt, otherwiſe than is aforeſaid. *Same rule.*

Aliter if defendant be an attorney.

But if the defendant be an attorney, or practiſes as ſuch, 'tis ſufficient, though no attorney on his behalf be preſent.

Warrant to confeſs a judgment in the preſence of an attorney of B. R. *is ſufficient.*

It is not neceſſary that a warrant of attorney to confeſs a judgment in this court given by a perſon in cuſtody, be executed in the preſence of an attorney of this court; if it be in the preſence of an attorney of the court of *King's Bench* it is ſufficient.

Warrant of attorney to confeſs a judgment to be read by or to the party.

Every warrant of attorney for confeſſing a judgment in this court ſhall be read over by the perſon who is to execute the ſame, or by ſome other perſon to him before the execution thereof; and if judgment ſhall be entered up upon any ſuch warrant of attorney which ſhall not be ſo read over as aforeſaid, ſuch judgment upon any motion may be ſet aſide as irregular. *Trin.* 14, 15 *Geo.* 2.

On warrant of a year ſtanding judgment can't be entered without leave of the court.

If judgment on a warrant of attorney be not entered up within a year, the plaintiff muſt apply to the court for leave to enter up the judgment, making an affidavit of the due execution of the warrant, that the debt is unſatisfied, and the defendant living.

When by a treaſury rule a judgment may be entered on an old warrant of attorney.

If a warrant of attorney to enter judgment be above a year old, and under ten years old, leave to enter judgment may be given by a treaſury rule; but if the warrant be above ten years old, the court muſt be moved for leave to enter judgment. If the warrant be under twenty years old, the common affidavit of due execution of the warrant,

rant, that the debt is unpaid and the parties living, is ſufficient for an abſolute rule; but if the warrant be above twenty years old, the rule muſt be to ſhew cauſe, and ſerved on defendant.

If the plaintiff has judgment, and it be not upon a verdict, his attorney muſt make out a *Præcipe* for a ſpecial original returnable on the firſt return of that term, in which the judgment (or interlocutory judgment in caſe of a writ of inquiry) is entered. *Of a ſpecial original to ſupport the judgment.*

The form of a Præcipe *for a ſpecial original in caſe.*

Middleſex, to wit. IF *L. B.* ſhall give you ſecurity to proſecute his ſuit, then put by ſureties and ſafe pledges *C. M.* late of *Weſtminſter* in the county of *Middleſex*, Eſq; that he be before our juſtices at *Weſtminſter* on the morrow of *All Souls*, to ſhew, That whereas the ſaid *C.* on the 25th day of *September* in the year of our lord 1738. at *Weſtminſter* in the ſaid county of *Middleſex*, was indebted to the ſaid *L.* in the ſum of 200*l.* of lawful money of *Great Britain*, for the hire of diverſe horſes, mares and geldings of him the ſaid *L.* and for the labour and attendance of diverſe of his ſervants, and alſo for the uſe of diverſe of his coaches and chariots by him the ſaid *C.* at his ſpecial inſtance and requeſt before that time uſed, hired and had; and being ſo indebted, the ſaid *C.* in conſideration thereof afterwards,

Præcipe *for a ſpecial original.*

Indebitatus aſſumpſit *for the uſe of horſes, coach, &c. and attendance of ſervants.*

afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, took upon himſelf, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly pay the ſaid 200*l.* to him the ſaid *L.* when he the ſaid *C.* ſhould be afterwards thereunto requeſted. *And alſo whereas* the ſaid *C.* afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, in conſideration that the ſaid *L.* had before that time, at the like ſpecial inſtance and requeſt of him the ſaid *C.* let to hire to him the ſaid *C.* diverſe other horſes, mares and geldings, and diverſe other coaches and chariots of him the ſaid *L.* and had alſo at the like ſpecial inſtance and requeſt of the ſaid *C.* before that time by diverſe of his ſervants done and performed for him the ſaid *C.* diverſe other labours and attendances, took upon himſelf, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly pay to the ſaid *L.* ſo much money, as he the ſaid *L.* had reaſonably deſerved to have for the ſame, when he the ſaid *C.* ſhould be afterwards thereunto requeſted. And he the ſaid *L.* doth aver, that he the ſaid *L.* reaſonably deſerved to have for the ſame the further ſum of 200*l.* of like lawful money, *to wit*, at *Weſtminſter* aforeſaid in the county aforeſaid, whereof the ſaid *C.* afterwards, that is to ſay, on the ſame day and year aforeſaid there had notice. *And alſo whereas* the ſaid *C.* afterwards,

Quantum meruit *thereon.*

Inſimul computaſſet.

wards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, had accounted with him the ſaid *L.* touching and concerning diverſe other ſums of money by him the ſaid *C.* to him the ſaid *L.* then due and in arrear, and unpaid; and upon that account he the ſaid *C.* was found in arrear to him the ſaid *L.* in the ſum of 132 *l.* 7 *s.* of like lawful money, and being ſo found in arrear he the ſaid *C.* in conſideration thereof afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, took upon himſelf, and to him the ſaid *L.* then and there faithfully promiſed that the ſaid *C.* would well and truly pay the ſaid 132 *l.* 7 *s.* to the ſaid *L.* when he the ſaid *C.* ſhould be afterwards thereunto requeſted: *Never-* *Breach.*
theleſs the ſaid *C.* in no wiſe regarding his ſaid ſeveral promiſes and undertakings ſo made by him as aforeſaid, but contriving and fraudulently intending him the ſaid *L.* in this behalf craftily and ſubtilly to deceive and defraud, hath not paid to him the ſaid ſeveral ſums of money, or any of them or any part thereof (although to pay the ſame to him the ſaid *L.* he the ſaid *C.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted by the ſaid *L.*) but the ſaid *C.* to pay the ſame to him hath hitherto altogether refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *L.* 200 *l.* as he ſaith,

R. R. *Returnable on the morrow of All Souls.*

This *Præcipe* must be carried to the cursitor of the county in which the action is laid, on or before the essoin-day of the subsequent term, pursuant to the following order.

Original to be bespoke on or before the essoin-day of the succeeding term.

No cursitor shall make, or permit to be made, within his respective office and division, any original writs whatsoever of any return past, unless he shall receive the instructions for making thereof within the term wherein the said writs are to be returnable, or at farthest *on or before* the essoin-day of the next succeeding term, without special warrant from the lord chancellor or lord keeper of the great seal of *England*, or master of the rolls for the time being. *Lord* Clarendon's *orders in chancery.*

Fine to the king.

If the debt demanded, or damages laid, except 40*l.* the plaintiff pays a fine to the king in proportion to such debt or damages, as follows:

	l.	*s.*	*d.*
From 40*l.* to 100 marks ——	0	6	8
From 100 marks to 100*l.* ——	0	10	0
From 100*l.* to 200 marks ——	0	13	4
From 133*l.* 6*s.* 8*d.* to 166*l.* 13*s.* 4*d.*	0	16	8
From 166*l.* 13*s.* 4*d.* to 200*l.* —	1	0	0
And for every 100 marks more	0	6	8
And for every 100*l.* more ——	0	10	0

Of returning the original.

When the cursitor has made out the original, the plaintiff's attorney returns it of course thus:

Pledges

Pledges to profecute { *John Doe*, *Richard Roe*.

The within named *C. M.* hath nothing in my bailiwic whereby he can be * attached,

The anſwer of
George Heathcote, eſq; } Sheriff.
Sir *John Lequeſne*, knt. }

And then he files it with the *Cuſtos brevium*.

He muſt alſo file a warrant of attorney for the plaintiff, and one for the defendant, if he appeared by attorney. *Vide antea fol.* 163. *Warrants of attorney.*

Of writs of inquiry.

WHEN you have ſigned your interlocutory judgment, you are to give the defendant notice of executing the writ of inquiry; and in ſome inſtances you may give notice of executing the writ of inquiry before you have ſigned interlocutory judgment, as in caſes of demurrers and iſſues on *Nul tiel record*, as appears *fol.* 200. *Notice of executing writ of inquiry.*

In *London* or *Middleſex* (the defendant dwelling within forty miles of *London*) there muſt be eight days notice given of executing a writ of inquiry, excluſive of the day whereon the notice is given. *Mich.* 1654. *Where 8 days notice of executing writ of inquiry in* London *or* Middleſex.

But if the defendant lives above forty miles from *London*, and the inquiry is to be executed in *London* or *Middleſex*, there muſt be fourteen days notice, excluſive of the day *Where fourteen days.*

* *Vide antea fol.* 101. the difference between attached and ſummoned.

of the notice. *Same rule.* This rule holds good although the defendant be an attorney of the court.

Eight days notice in the country.

And eight days notice, excluſive of the day of the notice, muſt be given of executing writs of inquiry in the country. *Same rule.*

Where a term's notice.

If there have been no proceedings for twelve months after judgment, there muſt be a term's notice given of executing a writ of inquiry of damages; and ſuch notice muſt be given before the eſſoin-day of the term. *Vide antea fol.* 166. *Rule, Paſ.* 13 *Geo.* 2.

Where plaintiff concludes ad patriam, *gives notice of trial, and defendant don't join iſſue, notice of inquiry to be from the time notice of trial was given.*

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of his pleading (purſuant to the rule of *Trinity* 2 *Geo.* 1. *antea fol.* 166.) if the defendant does not join iſſue on ſuch pleading before the rule is out, the defendant's attorney ſhall, after judgment obtained, be obliged to accept notice of executing a writ of inquiry from the time that the notice of trial was given on the back of ſuch pleading, as aforeſaid. *Hilary* 6 *Geo.* 1.

Where notice of inquiry may be given on demurrer or joinder in demurrer. And on iſſue of Nul tiel record.

Vide antea fol. 193. Where defendant ſhall be obliged to accept notice of executing a writ of inquiry on the back of a joinder in demurrer or demurrer; and *fol.* 199. where he ſhall be obliged to accept the like notice on the back of an iſſue of *Nul tiel record.*

Where notice to be delivered to defendant or left at his laſt place of abode.

Where the plaintiff has entered an appearance for the defendant, purſuant to the act of parliament, left a declaration for him in the office, given him proper notice thereof,

of, and ſigned judgment for want of a plea, he may give notice of executing his writ of inquiry either by delivering the notice in writing to ſuch defendant, or leaving the ſame for him at his laſt or moſt uſual place of abode, which ſhall be a ſufficient notice to ſuch defendant. *Mich.* 1 *Geo.* 2.

Notice of inquiry not to be given to defendant if his attorney be known.

Notice of trial or of executing a writ of inquiry given to a defendant, when his attorney is known, is not good notice; but when the defendant's attorney is not known, notice of trial or of executing a writ of inquiry may be given to the defendant.

The form of the notice.

Common Pleas.

John Denn
againſt
Richard Fenn.

SIR,

The form of a notice of inquiry.

Be pleaſed to take notice, that a writ of inquiry of damages in this cauſe will be executed on *Monday* the fourteenth day of *May* inſtant, at eleven of the clock in the forenoon, at the *Court-Houſe* at *Weſtminſter*,

Your humble ſervant,
L. R.
Attorney for the plt.
4th *May* 1739.

To Mr. N. C.
Attorney for deft.

As to the time.

Notice of executing a writ of inquiry at eleven of the clock in the forenoon is good, if the writ be executed before twelve.

Notice of executing a writ of inquiry between the hours of eleven and two is bad, it ſhould be confined to two hours at moſt, as between ten and twelve.

Notice of executing a writ of inquiry at ten in the forenoon, or ſo ſoon after as the ſheriff can attend, is bad for incertainty.

And place. The notice ſhould be certain as to the place, *viz.* the houſe, ſtreet, *&c.* A notice of executing a writ of inquiry at the ſign of the *Three Tons* in *Brook-ſtreet*, *Middleſex*, was held bad, not ſaying where that *Brook-ſtreet* was, *viz.* in *Holborn*, there being three *Brook-ſtreets* in *Middleſex*. Lemark *v.* Newman, Trin. 10 Geo. 2.

Notice to country attorney. Notice of inquiry may be given in the country to the country attorney. *Vide antea* 165.

Of executing inquiry before a judge of aſſiſe. Notice for executing a writ of inquiry before a judge at the aſſiſes ought to be for the aſſiſes generally, and not for any particular day, and need not be entered with the marſhal, it not being within the rule concerning records of *Niſi prius*, the judge being no more than an aſſiſtant to the ſheriff to whom the writ is directed.

Promiſſory note, &c. muſt be proved on writ of inquiry. If the action be on a promiſſory note or bill of exchange, the letting judgment go by default is not ſuch an admittance of the note or bill as to render the proof of them unneceſſary; on the contrary they muſt be proved on executing the writ of inquiry.

Irregularities cured by defence. Irregularity in the notice, *&c.* is cured by the defendant's making a defence on executing the writ of inquiry.

Inquiries

Inquiries have been ſet aſide for exceſſive damages, and where the ſheriff has admitted improper evidence to leſſen damages. *Inquiries ſet aſide.*

A writ of inquiry of damages.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. To the ſheriff of *Middleſex*, greeting. Whereas *B. C.* late of *S.* in your county, gentleman, was attached to be in our court before our juſtices at *Weſtminſter*, to anſwer *D. E.* in a plea, wherefore whereas the ſaid *B.* on the tenth day of *March* in the year of our reign, at *Weſtminſter* in the county of *Middleſex*, &c. [*as in the declaration do*] to the damage of the ſaid *D.* of fifty pounds, as he ſaith; and it was in ſuch manner proceeded in our ſaid court, that the ſaid *D.* ought to recover againſt the ſaid *B.* his damages, by occaſion of the not performing the ſaid promiſes and undertakings (*or by occaſion of the premiſſes, by occaſion of the ſaid treſpaſs, treſpaſs and aſſault, breach of the covenant, or the like, as the action is.*) But becauſe it is unknown what damages the ſaid *D.* has ſuſtained by occaſion of the premiſſes, we command you, that by the oath of twelve good and lawful men of your county (*if in* London, *ſay, of your bailiwic*) you diligently inquire what damages the ſaid *D.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by *Writ of inquiry.*

him about his ſuit in this behalf expended; and the inquiſition which you ſhall make thereof make appear to our juſtices at *Weſtminſter*, on the morrow of the aſcenſion of our lord, under your ſeal, and the ſeals of them by whoſe oath you ſhall make that inquiſition; and have you there the names of them by whoſe oath you ſhall make that inquiſition, and this writ. Witneſs * Sir *John Willes*, knight, at *Weſtminſter*, the day of in the twelfth year of our reign.

Cooke.

If the action be at the ſuit of an attorney of the court, the writ of inquiry is in this form:

The form when at the ſuit of an attorney.

GEORGE the ſecond, *&c.* To, *&c.* Whereas *C. V.* was attached by our writ of privilege iſſuing out of our court here, to be before our juſtices at *Weſtminſter*, to anſwer *S. O.* gentleman, one of the attornies of our court of the bench, according to the liberties and privileges of the ſame court, for ſuch attornies and other miniſters of the ſame bench time out of mind uſed and approved in the ſame; for that, *to wit*, That whereas the ſaid *S.* on the day of, *&c.* (*ſetting forth the declaration to*) to the damage of the

* A writ of inquiry in this court was teſted *Philip* lord *Hardwick*, inſtead of Sir *John Willes*; on writ of error brought, it was held this was no good cauſe of error, and judgment was affirmed. *Andrews's Rep.* 74.

ſaid

ſaid *C.* of twenty pounds, as is ſaid; and it was in ſuch manner proceeded in our ſaid court, That, *&c.* (*as before, making the writ returnable on a day certain, as on* Monday *next after fifteen days of* Eaſter, *and not on a general return day.*)

If an attorney be defendant, the form is thus: *When againſt an attorney.*

GEORGE the ſecond, *&c.* To, *&c.* Whereas *D. W.* by *W. T.* his attorney, came into our court before our juſtices at *Weſtminſter*, and exhibited to our ſaid juſtices his bill againſt *T. P.* gentleman, one of the attornies of our court of the bench, preſent in our ſaid court, in his proper perſon, for that, *&c.* (*as before*) and the writ to be returnable on a day certain.

Writs of inquiry are to be ſigned by the prothonotary before they are ſealed.

If your witneſſes will not voluntarily attend, you may have a *Subpœna* for them in this form:

GEORGE the ſecond, by the grace of god, of *Great Britain, France*, and *Ireland* king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command you, and each of you, firmly injoining, that all other matters laid aſide, and notwithſtanding any excuſe, you be in your proper perſons before the ſheriff of *Middleſex* at the *Court-Houſe* at *Weſtminſter*, on the day of at eleven of the clock in the forenoon of the ſame day, Subpœna ad teſtif. *on a writ of inquiry.*

day, to teſtify the truth in a certain matter of controverſy depending in our court before our juſtices of the bench, between *K. J.* plaintiff, and *S. H.* defendant, in a plea of treſpaſs on the caſe; and this you are not to omit under the penalty of one hundred pounds. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the twelfth day of *May* in the twelfth year of our reign.

Cooke.

When the writ is ſigned and ſealed, you make out tickets for the witneſſes, as before directed on *Subpœnas* for trials, *fol.* 175.

When the writ of inquiry is returned by the ſheriff, you get the inquiſition ſtamped with a double half-crown ſtamp, and then carry it to the prothonotary to tax your coſts, and after that you deliver it to the clerk of the judgments to enter up final judgment on the roll.

On ſigning judgment the inquiſition to be left with the clerk of the judgments.

Where final judgments ſhall be ſigned on inquiſitions upon writs of inquiry, the inquiſition ſhall be immediately left with the clerk of the judgments of the reſpective prothonotary, and ſhall not afterwards be taken out of the office without leave of the court. *Trin.* 29 *Car.* 2. *Trin.* 13 *Geo.* 2.

If inquiry not executed according to notice, deft. to have coſts.

Where notice is given of a writ of inquiry, and not countermanded in time, the defendant ſhall be intitled to coſts from the plaintiff, for not executing ſuch writ of inquiry, in the ſame manner as a defendant, by the courſe of the court, is now intitled to coſts from a plaintiff who does not proceed to

trial of an iſſue joined after notice given. *Trin.* 13 *Geo.* 2.

Of bringing in rolls and docketing the rolls.

EVery attorney that ſhall receive any roll, either plea or common, from the reſpective prothonotaries of this court, ſhall ſign and ſet his name to ſuch prothonotary's book, from whom he ſhall receive the ſame; and no prothonotary ſhall deliver any roll but to the proper hand of ſome known attorney or clerk of their reſpective offices. *Paſ.* 34 *Car.* 2. *Attorney on receiving roll from prothonotary's office to ſign the book.*

No attorney ſhall carry any rolls of this court into the country. *Paſ.* 12 *Jac.* 1. *Mich.* 1649. *Mich.* 1654. *Paſ.* 34 *Car.* 2. *Rolls not to be carried into the country.*

Every attorney of this court, that ſhall receive any roll or rolls as aforeſaid, plea or common, of any *Eaſter* term, ſhall bring the ſame into the office from whence he received it on or before the firſt day of the next *Trinity term.* *When attornies are to bring in their rolls.* Eaſter *term.*

And the rolls received of any *Trinity* term ſhall be brought into ſuch office on or before the feaſt-day of St. *Michael* the archangel next enſuing the ſaid term. Trinity.

And the rolls received of any *Michaelmas* term ſhall be brought into ſuch office on or before the ſixth day of *January* next enſuing. Michaelmas.

And the rolls received of any *Hilary* term ſhall be brought into ſuch office by the ſpace Hilary.

of

of four days before the feaſt of *Eaſter* next after the ſaid term. *Paſch.* 34 *Car.* 2.

Caret paper. The prothonotaries, on delivering the common rolls to the clerk of the warrants, are alſo to deliver a note of the rolls that are wanting, the ſame note to be ſubſcribed by the clerk of the warrants, and re-delivered to the prothonotary; and the clerk of the warrants, on delivering over the common rolls to the clerk of the eſſoins, is to take the like note from the clerk of the eſſoins of the rolls wanting. *Mich.* 1654.

No poſt-rolls to be delivered to attornies. The clerk of the eſſoins ſhall not deliver out any poſt-rolls, or other rolls of this court, to any attorney or clerk of this court, but to the reſpective prothonotaries and other officers of this court, that have a right to ſuch rolls. *Paſch.* 34 *Car.* 2.

When the officers are to carry in the rolls to the clerk of the eſſoins. The ſeveral and reſpective *officers* of this court ſhall deliver in all their rolls of *Trinity*, *Michaelmas* and *Hilary* term, to the clerk of the eſſoins, before the eſſoin-day of the ſeveral terms following; and their rolls of *Eaſter* term upon or before the firſt day of *Trinity* term following; and the officer who ſhall not bring or ſend in all his rolls of the ſaid ſeveral terms at the times aforeſaid ſhall pay to the clerk of the eſſoins for every roll brought in after, 12*d.* 6 *Jac.* 1. *Paſ.* 5 *W.* & *M.*

The plea rolls of every term ſhall be brought in to the clerk of the eſſoins three weeks after the end of the term following, and in default thereof, there ſhall be likewiſe paid to the clerk of the eſſoins, for every

plea roll brought in after, 12 *d.* *Paſ.* 5 *W.* & *M.*

The clerk of the eſſoins ſhall a fortnight within every term lay before the court an account of what rolls are wanting, that ought to have been brought in according to the ſaid rules, together with the attorney's names who took them out of the ſaid offices, that this court may proceed as they ſhall think fit againſt ſuch perſons as ſhall not have brought in their rolls according to the ſaid rules. *Trin.* 2 *Geo.* 1. *The clerk of the eſſoins to lay before the court an account of what rolls are wanting.*

On carrying in your rolls to the protho-notary you are to docket them on the common docket, in the manner as you'll ſee others, thus: *Of docketing judgments.*

Not informed in debt.

Middleſex. *Weſt* for *Burton* } Roll 225.
Parker for *Taylor*, }

Says nothing in caſe.

M. Same for ſame, } Same.
Same for ſame, }

Forejudger.

M. Same for *Wace*, }
againſt } 342.
Wilſon an attorney, }

Execution by default.

M. Same for ſame, }
againſt } Same.
Vanbrugh. adminiſt. }

The

The prothonotary delivers the rolls over to the clerk of the warrants, who is to inſpect the ſame, and eſtreat all fines and amerciaments againſt ſheriffs and others that he ſhall find amongſt the ſaid rolls, and then to deliver them to the clerk of the eſſoins, who dockets them, purſuant to the ſtatute of 4 & 5 of *W. & M. c.* 20. then binds them up, and carries them over to the treaſury at *Weſtminſter*.

Of executions.

Ca. ſa. 1. A *Capias ad ſatisfaciendum* is a writ which iſſues after a judgment; and by this writ the ſheriff is commanded to take the body of the defendant, and have him in court at the return of the writ to ſatisfy the plaintiff.

This writ was by the common law only in treſpaſſes, *Quare vi & armis*, being direct and wilful wrongs; but now by the ſtatute 25 *Ed.* 3. may iſſue in other caſes. It is deemed a full execution, and in the law ſufficient for the whole debt; *corpus humanum non recipit æſtimationem*; and where the body is taken on a *Capias ad ſatisfaciendum*, no other execution can be had againſt the defendant's lands or goods. But in caſe the defendant dies in execution, by the ſtatute 21 *Jac.* 1. *c.* 24. the plaintiff, his executors or adminiſtrators, may lawfully ſue forth execution againſt the lands and tenements, goods and chattels of the defendant ſo dying in execution,

If deft. dies in execution, plt. may have execution againſt the lands or goods.

cution, in like manner as if the deceaſed defendant had never been taken in execution: In this caſe the judgment muſt be revived by *Scire facias*.

If two be bound jointly and ſeverally to me, and I ſue them jointly, I may have a *Capias* againſt them both, and the death or eſcape of one, ſhall not diſcharge the other; but I cannot have a *Capias* againſt the one, and another kind of execution againſt the other, becauſe though they be two ſeveral perſons, yet they make but one debtor, when I ſue them jointly; but if I ſue them ſeverally I may ſever them in their kinds of execution; though if once a very ſatisfaction be had of one, or againſt the ſheriff for an eſcape of one, the reſt may be relieved upon an *Audita querela*. Hob. 59.

2. A *Fieri facias* is a writ which commands the ſheriff to levy the debt or damages and coſts recovered by a judgment, of the goods of the defendant, and to have the ſame in court at the return of the writ to ſatisfy the plaintiff. Fi. fa.

If after this writ is ſued out, and before it is executed, the defendant dies, it may be executed on his goods in the hands of his executors or adminiſtrators. *Where executed after defendant's death.* 3 Danv. 319. pl. 8.

If only part of the debt or damages be levied, the plaintiff may have a *Ca. fa.* or *Elegit* for the reſidue. *Hob.* 57, 58. *If only part levied,* Ca. fa. *or* Elegit *for reſidue.*

3. *Elegit*; this writ is given by the ſtatute of *W.* 2. 13 *Ed.* 1. *c.* 18. And by this writ the ſheriff is to deliver to the plaintiff all the chattels of the defendant, except his Elegit.

his oxen and the beaſts of his plow, and one half of his land, to hold until the debt or damages, and coſts recovered, be ſatisfied, upon a reaſonable price or extent.

If only part levied, Ca. ſa. *for the reſt.*

If on an *Elegit* only goods be levied, and theſe not ſufficient to ſatisfy the judgment, the plaintiff may have a *Capias* for the reſidue, it being in effect but a *Fieri facias.* Hob. 58.

If I take out a *Ca ſa.* or *Fi. fa.* and they take no effect, I may have one of them after another, or an *Elegit* after both, if they fail. *Hob.* 57.

If the judgment be on a bond with a penalty, the plaintiff may, as far as the penalty will extend, levy the poundage payable to the ſheriff, and all incident charges of the execution.

Execution to be ſued out within the year, or elſe a Sci. fa.

If execution be not ſued out within a year, the judgment muſt be revived by *Scire facias.*

Where helped by continuances on the roll, &c.

But on a rule to ſhew cauſe, why a *Fieri facias* ſhould not be ſet aſide, the judgment being above a year old, and not revived by *Scire facias,* nor any continuances of a *Fieri facias* entered on record; the plaintiff having, before cauſe ſhewn, entered the continuances, and producing intervening writs of *Fieri facias* to warrant the ſame, the rule was diſcharged.

Of Teſtatum *Executions.*

In caſe of a *Teſtatum fieri facias* or *Ca. ſa.* the court will not go into a nice inquiry when the *Fieri facias,* or *Ca. ſa.* into the original county to warrant the *Teſtatum* was ſued out; it

it is ſufficient if the firſt *Fieri facias*, or *Ca. ſa.* returned be produced.

If the plaintiff hath brought an action of debt on the judgment, he cannot take out an execution on that judgment, until he hath diſcontinued the action of debt. *Of execution pending debt on the judgment.*

It hath been held, that after execution executed, though the judgment be for a penalty, the court cannot refer to the prothonotary to inquire what is due for principal, intereſt, and coſts; and what is levied in order to make reſtitution of the ſurplus, without the conſent of the plaintiff; but the defendant muſt apply for relief to a court of equity. *After execution executed the court cannot inquire into the* Quantum *of debt and coſts.*

Capias ad ſatisfaciendum *in debt.*

Ca. ſa. *in debt.*

GEORGE the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriffs of *London*, greeting. We command you, that ye take *W. B.* late of *London*, cabinet-maker, otherwiſe called *W. B.* late of the pariſh of in the county of *Middleſex*, cabinet-maker, if he be found in your bailiwick, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the morrow of the holy *Trinity*, to ſatisfy *R. R.* as well of a certain debt of fifty pounds, which the ſaid *R.* in our court before our juſtices at *Weſtminſter* recovered againſt him, as of ſixty-three ſhillings, which in our ſaid court were adjudged to the ſaid *R.* for his damages, which he had by oc-

	s.	*d.*
Signing	0	4
Seal	—	7
Duty	1	0
	1	11

caſion of the detaining that debt, whereof the ſaid *W.* is convicted; and have there this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the day of in the twelfth year of our reign.

Treſpaſs on the caſe. To ſatisfy *R. R.* of fifty pounds, which were adjudged to the ſaid *R.* in our ſaid court, before our juſtices at *Weſtminſter*, for his damages which he ſuſtained by occaſion of a certain treſpaſs on the caſe done to the ſaid *R.* by the ſaid *W.* at *S.* in your county, whereof he is convicted; and have you there this writ. Witneſs, *&c.*

Treſpaſs on the caſe ſur aſſumpſit. For his damages which he had by occaſion of the not performing certain promiſes and undertakings made to the ſaid *R.* by the ſaid *W.* at *W.* in your county; whereof, *&c.*

Breach of covenant. For his damages which he had by occaſion of the not performing a covenant made between the ſaid *W.* and the ſaid *R.* according to the force, form and effect of certain indentures [*or articles*] made between them; whereof, *&c.*

Treſpaſs and aſſault. For his damages which he ſuſtained by occaſion of a certain treſpaſs and aſſault, made on the ſaid *R.* by the ſaid *W.* with force and arms, and againſt our peace, at *W.* in your county; whereof, *&c.*

Treſpaſs. For his damages which he ſuſtained by occaſion of a certain treſpaſs done to the ſaid *R.* by the ſaid *W.* with force and arms, and againſt our peace, at *L.* in your county; whereof, *&c.*

For his damages which he ſuſtained by occaſion of a certain treſpaſs and ejectment of a farm done to the ſaid *R.* by the ſaid *W.* with force and arms, and againſt our peace, at *L.* in your county; whereof, *&c.* *In ejectment for damages.*

For his damages which he had by occaſion of the taking and unjuſtly detaining the cattle of the ſaid *R.* at *W.* in a certain place called the *H.* in your county; whereof, *&c.* *Replevin.*

For his damages which he had by occaſion of the ſpeaking and publiſhing certain falſe and ſcandalous words by the ſaid *W.* of the ſaid *R.* at *B.* in your county; whereof, *&c.* *Words.*

If you make out a *Teſtatum Ca. ſa.* you are to write as before, to [whereof he is convicted *incluſive*] and after thoſe words you are to proceed thus; and whereupon our ſheriff of *N.* [*the ſheriff to whom the firſt* Ca. ſa. *was directed*] ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *W.* was not found in his bailiwic, whereas it is teſtified in our ſaid court, that he lurketh and ſecreteth himſelf in your county; and have there, *&c.* Teſtatum Ca. ſa'.

Signing s. d. 0 8

If it be after a *Sci. fa.* then after the words [whereof he is convicted] ſay, and whereupon it is conſidered in our ſaid court, that the aforeſaid *R.* have his execution againſt the aforeſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* and have there, *&c.* Ca. ſa. *after a* Sci. fa'.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, *A* Teſtatum Ca. ſa. *after a* Sci. fa. *by*

an adminiſt. durante minoritate executoris of an executor.

king, defender of the faith, &c. To the ſheriff of *S.* greeting. We command you, that you take *V. C.* late of, &c. if he be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the octave of the Holy *Trinity* to ſatisfy *J. F.* adminiſtrator of the goods and chattels which were of *B. F.* during the minority of *W. F.* executor of the teſtament and laſt will of the ſaid *B.* late executor of the teſtament and laſt will of *W. B.* deceaſed, as well of a certain debt of ſixty pounds, which the aforeſaid *B.* lately in our court before our juſtices at *Weſtminſter* recovered againſt the ſaid *V.* as of fifteen pounds, which in our ſaid court were adjudged to the ſaid *B.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *V.* is convicted; and whereupon it is conſidered in our ſaid court,

Sci. fa'.

that the aforeſaid *J.* have his execution againſt the ſaid *V.* of the debt and damages aforeſaid, by the default of the ſaid *V.* And

Teſtatum.

whereupon our ſheriffs of our city of *Exeter* have returned to our juſtices at *Weſtminſter* at a certain day now paſt, that the aforeſaid *V.* is not found in their bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *V.* lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, &c.

Teſtatum Ca. fa. *for the reſidue after a* Fi. fa. *in debt.*

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. To the ſheriff of *Lincoln*, greeting. We command you,

you, that you take *W. G.* late of *S.* in the county of *Leiceſter*, gentleman, otherwiſe called *W. G.* of *S.* in the county of *Leiceſter*, gentleman, if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* in fifteen days from the day of Saint *Martin*, to ſatisfy *W. R.* gentleman, of eighteen pounds nine ſhillings and one penny, parcel of a certain debt and damages, *to wit*, of a certain debt of forty pounds, which the ſaid *W. R.* in our court before our juſtices at *Weſtminſter* recovered againſt him, and of forty ſhillings which in our ſaid court were adjudged to the ſaid *W. R.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *W. G.* is convicted, of which ſaid debt and damages twenty-three pounds ten ſhillings and eleven pence, other parcel, by virtue of our writ thereupon were lately made and levied of the goods and chattels of the ſaid *W. G.* And whereupon our ſheriff of *N.* ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *W. G.* is not found in his bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *W. G.* lieth hid, wandereth and ſculketh in your county; and have there this writ. Witneſs, *&c.* Teſtatum.

GEORGE the ſecond, *&c.* To, *&c.* greeting. We command you, that you take *W. A.* late of, *&c.* and *W. S.* late of, *&c.* if they be found in your bailiwic, ſo that you may have their bodies before our juſtices Ca. ſa. *againſt two where ſeveral damages by inquiry in treſpaſs and aſſault.*

at *Weſtminſter*, on *to wit*, the ſaid *W. A.* to ſatisfy *R. B.* of twenty pounds, and the ſaid *W. S.* to ſatisfy the ſaid *R. B.* of forty pounds, for his ſeveral damages which the ſaid *R.* ſuſtained by occaſion of a certain aſſault, beating, wounding and ill treatment made on the ſaid *R.* by the ſaid *W.* and *W.* and againſt our peace with force and arms, at *B.* in your county, as is found by a certain inquiſition of the country of your county taken between them; and alſo the ſaid *W.* and *W.* to ſatisfy the ſaid *R.* of ſeventeen pounds which were adjudged to the ſaid *R.* in our ſaid court, for his coſts and charges which he ſuſtained by occaſion of the premiſſes; whereof they are convicted; and have there, *&c.*

Upon a nonſuit in debt. To ſatisfy *C. D.* late of, *&c.* eſq; of nine pounds and ten ſhillings, which in our court before our juſtices at *Weſtminſter*, by the diſcretion of the ſaid juſtices according to the form of the ſtatute in that caſe made and provided, were adjudged to the ſaid *C.* for his coſts and charges which he ſuſtained, for that the ſaid *E. T.* did not proſecute his writ by him the ſaid *E.* obtained in our ſaid court againſt the ſaid *C.* in a certain plea of debt upon demand for forty pounds, whereof the ſaid *E.* is convicted; and there, *&c.*

If in caſe, ſay, —— in a certain plea of treſpaſs on the caſe.

In treſpaſs, —— in a certain plea of treſpaſs.

In

In ejectment, —— in a certain plea of treſpaſs and ejectment of farm, *et ſic de cæteris.*

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *L.* greeting. Attach *L. R.* gentleman, one of the attornies of our court of the bench, otherwiſe called *L. R.* of, *&c.* ſo that you may have him before our juſtices at *Weſtminſter* on *Wedneſday* next after the morrow of *All Souls*, to ſatisfy *J. S.* gentleman, another attorney of our court of the bench, as well of a certain debt of ſixty pounds, which the ſaid *J.* in our court, before our juſtices at *Weſtminſter* recovered againſt him, as of fourteen pounds and ten ſhillings which were adjudged to the ſaid *J.* in our ſaid court, for his damages which he had by occaſion of the detaining that debt, whereof the ſaid *L.* is convicted; and whereupon our ſheriff of *M.* ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *L.* was not found in his bailiwic, whereas it was teſtified in our ſaid court, that he lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, *&c.*

A Teſtatum Ca. ſa. *of privilege for an attorney againſt an attorney, in debt.*

Teſtatum.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriffs of *N.* greeting. Attach *W. T.* gentleman, one of the attornies of our court of

A Teſtatum Ca. ſa. *by a ſurviving plaintiff againſt an attorney, in debt.*

the bench, otherwiſe called *W. T.* of, &c. ſo that you may have him before our juſtices at *Weſtminſter* on next after to ſatisfy *V. D.* as well of a certain debt of five hundred pounds, which the ſaid *V. D.* and one *T. J.* now deceaſed, in our court before our juſtices at *Weſtminſter* recovered againſt him as of nine pounds which in our ſaid court were adjudged to the ſaid *V.* and *T.* for their damages which they had by occaſion of the detaining that debt, whereof the ſaid *W.* is convicted; and whereupon it is conſidered in our ſaid court, that he the ſaid *V.* have execution againſt the ſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* And whereupon our ſheriffs of *London* ſent to our juſtices at *Weſtminſter* on a certain day now paſt, that the ſaid *W.* was not found in their bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *W.* lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, &c.

Sci. fa'.

Teſtatum.

Teſtatum Ca. ſa. *againſt bail after* Nulla Bona *returned on a* Fi. fa'.

Recital of Fi. fa'.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. To the ſheriff of *Surry*, greeting. Whereas we lately commanded our ſheriff of *Middleſex*, that he ſhould cauſe to be made of the lands and chattels in his bailiwic of *T. S.* late of, &c. thirty-eight pounds; and of the lands and chattels in his bailiwic of *F. F.* late of, &c. other thirty-eight pounds; and of the lands and chattels in his bailiwic of *T. P.* late of, &c.

&c. other thirty-eight pounds. Which ſaid ſeveral ſums of thirty-eight pounds each of them the ſaid *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, ſeverally acknowledged themſelves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the uſe and behoof of the ſaid *E. P.* and *W. F.* to be levied; which ſaid recognizance in that ſame term at *Weſtminſter* aforeſaid is inrolled, as by the ſaid record and proceedings thereon in our ſame court before our ſaid juſtices at *Weſtminſter* aforeſaid remaining manifeſtly appears; and that he ſhould have that money before our ſaid juſtices at *Weſtminſter* from the day of *Eaſter* in fifteen days laſt paſt, to render to the ſaid *E.* and *W.* for the ſeveral ſums of money aforeſaid, according to the form of the ſaid recognizance whereof they are convicted; and whereupon it is conſidered in our ſaid court, that the ſaid *E.* and *W.* ſhould have their execution againſt the aforeſaid *T. S. F.* and *T. P.* of the ſaid ſeveral ſums of thirty-eight pounds by them in form aforeſaid acknowledged, by the default of them the ſaid *T. S. F.* and *T. P.* And whereupon our ſheriff of *Middleſex* at *Return.* that day ſent to our ſaid juſtices at *Weſtminſter*, that the ſaid *T. S. F.* and *T. P.* had not, nor had any one of them any lands or chattels in his bailiwic, whereof he was able to make the ſaid ſeveral ſums of 38 *l.* 38 *l.* and

and 38*l.* or any part thereof: We therefore command you, that you take the ſaid *T. S. F.* and *T. P.* if they may be found in your bailiwic, and keep them ſafely, ſo that you may have their bodies before our juſtices at *Weſtminſter* on the morrow of the Holy *Trinity*, to ſatisfy the aforeſaid *E.* and *W.* of the ſaid ſeveral ſums of thirty-eight pounds, according to the form of the ſaid recognizance, whereof they are convicted; and whereupon our ſaid ſheriff of *Middleſex* ſent to our ſaid juſtices at *Weſtminſter* from the day of *Eaſter* in five weeks laſt paſt, that the aforeſaid *T. S. F.* and *T. P.* were not, nor was any one of them found, in his bailiwic, whereas it is teſtified in our ſaid court, that they lurk and ſecrete themſelves in your county; and have there, *&c.*

Teſtatum.

Teſtatum Ca. ſa. *againſt an executor after a* Devaſtavit, *and* Nulla bona *returned.*

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *D.* greeting. Whereas we lately by our writ commanded our ſheriff of *M.* that of the goods and chattels in his bailiwic, which were of *S. V.* late of, *&c.* at the time of his death, in the hands of *V. C.* gentleman, late of, *&c.* executor of the teſtament and laſt will of the ſaid *S.* he ſhould cauſe to be made, as well a certain debt of five hundred pounds, which *W. W.* in our court before our juſtices at *Weſtminſter* recovered againſt the ſaid *V. C.* as alſo eighteen pounds which in our ſaid court were adjudged to the ſaid *W.* for his damages which he

he had by occaſion of the detaining that debt, if the ſaid *V.* had ſo much in his hands to be adminiſtered; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *V.* and ſhould have that money before our juſtices at *Weſtminſter* on the morrow of the Purification of the bleſſed *Mary* laſt paſt, to render to the ſaid *W.* for his debt and damages aforeſaid, whereof he is convicted; and our ſaid ſheriff of *M.* at that day ſent to our ſaid juſtices at *Weſtminſter*, that the ſaid *V. C.* had before the coming of the ſaid writ ſold and waſted diverſe goods and chattels which were of the ſaid *S. V.* at the time of his death, to the value of the debt and damages aforeſaid, and had converted the money ariſing therefrom to his own proper uſe, ſo that he could not levy, or cauſe to be made the ſaid debt and damages of the goods and chattels of the ſaid *S. V.* And the ſaid *V. C.* had no goods or chattels of his own proper goods and chattels in his bailiwic, whereof he could cauſe to be made the ſaid damages, or any part thereof, as by that writ he was commanded; therefore we command you, that you take the ſaid *V. C.* if he may be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the morrow of the Aſcenſion of our lord, to ſatisfy the ſaid *W.* of the debt and damages aforeſaid; and whereupon our ſheriff of *M.* Teſtatum.
from the day of *Eaſter* in fifteen days laſt paſt ſent to our juſtices at *Weſtminſter*, that the

the ſaid *V. C.* was not found in his bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *V. C.* lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, *&c.*

Ca. ſa. *for damages againſt an executrix after* Nulla bona propria *returned.*

GEORGE the ſecond, *&c.* to the ſheriff of *K.* greeting. Whereas we lately by our writ commanded you, that of the goods and chattels in your bailiwic, which were of *N. R.* deceaſed, at the time of his death, being in the hands of *M. R.* late of *N.* in your county, widow, executrix of the teſtament and laſt will of the ſaid *N.* to be adminiſter'd you ſhould cauſe to be made thirty-four pounds, which in our court, before our juſtices at *Weſtminſter* were adjudged to *R. B.* for his damages which he ſuſtained by occaſion of the not performing certain promiſes and undertakings made to the ſaid *R.* by the ſaid *N.* in his life-time at *M.* in your county, if the ſaid *M.* had ſo much thereof in her hands to be adminiſter'd; and if ſhe had not, then fourteen pounds and ten ſhillings of the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *M.* and ſhould have that money before our juſtices at *Weſtminſter* from the day of the Holy *Trinity* in three weeks laſt paſt, to render to the ſaid *R.* for his damages aforeſaid, whereof ſhe is convicted; and you at that day ſent to our ſaid juſtices at *Weſtminſter*, that the ſaid *M.* had no goods or chattels in your bailiwic which were of the ſaid *N.* at the time of his death, whereof you could cauſe

cauſe to be made the ſaid damages, or any peny thereof, nor any of her own proper goods or chattels in your ſaid bailiwic, whereof you could cauſe to be made the ſaid fourteen pounds and ten ſhillings of damages aforeſaid, or any peny thereof; we therefore command you, that you take the ſaid *M.* if ſhe may be found in your bailiwic, and keep her ſafely, ſo that you may have her body before our juſtices at *Weſtminſter* from the day of Saint *Michael* in three weeks, to ſatisfy the ſaid *R.* of the ſaid fourteen pounds and ten ſhillings of damages aforeſaid; and have there this writ. Witneſs, *&c.*

Ca. ſa. *in caſe at the ſuit of an executrix.*

GEORGE the ſecond, *&c.* To the ſheriffs of *London*, greeting. We command you, that you take *M. G.* late of *L.* widow, if ſhe ſhall be found in your bailiwic, and her ſafely keep, ſo that you may have her body before our juſtices at *Weſtminſter* to ſatisfy *E. K.* executrix of the teſtament and laſt will of *G. K.* her late huſband deceaſed, of one hundred and ſeventeen pounds and ten ſhillings, which to the ſaid *E.* in our court before our juſtices at *Weſtminſter*, were adjudged for the damages of the ſaid *G.* which he ſuſtained by reaſon of not performing certain promiſes and undertakings made by the ſaid *M.* to the ſaid *G.* in his life-time at *L.* aforeſaid in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, whereof the ſaid *M.* is convicted; and whereupon it was conſidered in our ſame court, that the damages aforeſaid

Sci. fa. *on* Stat. 8 & 9 W. 3. c.

aforeſaid by him the ſaid *G.* ſuſtained by occaſion of not performing the promiſes and undertakings aforeſaid, ſhould be aſſeſſed and adjudged to the ſaid *E.* according to the form of the ſtatute in that caſe made and provided, by default. Witneſs, *&c.*

A Fieri facias *in debt.*

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Lincoln*, greeting. We command you, that you cauſe to be made of the goods and chattels in your bailiwic of *B. C.* late of, *&c.* as well a certain debt of 20*l.* which *D. E.* in our court, before our juſtices at *Weſtminſter* recover'd againſt him, as ſixty ſhillings which were adjudged to the ſaid *D.* in our ſaid court, for his damages which he had by occaſion of the detaining that debt; and have that money before our juſtices at *Weſtminſter* on the morrow of the Aſcenſion of our lord, to render to the ſaid *D.* for his debt and damages aforeſaid, whereof the ſaid *B.* is convicted; and have there this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the day of, *&c.*

For varying the *Fieri facias* according to the nature of the action, the directions before given, *fol.* 222, *&c.* for making out the *Capias ad ſatisfaciendum* will ſerve.

Teſtatum Fi. fa.

In a *Teſtatum fieri facias*, after the words [*whereof he is convicted*] ſay, and whereupon our ſheriff of *N.* ſent to our juſtices at a certain day now paſt, that the ſaid *B.* hath no

no goods or chattels in his bailiwic, whereof he could cauſe to be made or levied the ſaid debt and damages, or any part thereof: Whereas it is teſtified in our ſaid court, that the ſaid *B.* hath ſufficient goods and chattels in your county whereof the ſaid debt and damages may be cauſed to be made and levied; and have there this writ. Witneſs, *&c.*

GEORGE the ſecond, *&c.* To, *&c.* greeting. We command you, that of the goods and chattels in your bailiwic, which were of *S. H.* deceaſed, at the time of his death, in the hands of *E. H.* late of, *&c.* widow, adminiſtratrix of the goods and chattels which were of the ſaid *S. H.* to be adminiſter'd, you cauſe to be made as well a certain debt of thirty pounds, which *R. F.* gentleman, in our court before our juſtices at *Weſtminſter* recovered againſt her, as ten pounds which in our ſaid court were adjudged to the ſaid *R.* for his damages which he had by occaſion of the detaining that debt, if the ſaid *E.* hath ſo much goods and chattels which were of the aforeſaid *S.* at the time of his death in her hands to be adminiſter'd; and if ſhe hath not, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *E.* And have that money before our juſtices at *Weſtminſter* on the morrow of the Holy *Trinity*, to render to the ſaid *R.* for the debt and damages aforeſaid whereof ſhe is convicted; and have there this writ. Witneſs, *&c.* Fi. fa. *againſt an adminiſtratrix.*

GEORGE

Teſtatum Fi. fa. *after* Sci. fa. *in caſe on aſſumpſit upon a recovery againſt the wife while ſole.*

GEORGE the ſecond, *&c.* To, *&c.* greeting. We command you, that of the goods and chattels in your bailiwic of *J. M.* late of, *&c.* and *E.* his wife, lately called, *&c.* you cauſe to be made twenty and five pounds and ten ſhillings which in our court, before our juſtices at *Weſtminſter* were adjudged to *J. J.* and *R. R.* for their damages which they ſuſtained by occaſion of the not performing certain promiſes and undertakings to the ſaid *J.* and *R.* by the ſaid *E.* when ſhe was ſole, made at *B.* in the county of *S.* And have that money before our juſtices at *Weſtminſter* from the day of the Holy *Trinity* in three weeks, to render to the ſaid *J.* and *R.* for their damages aforeſaid, whereof the ſaid *E.* is convicted; and whereupon it is conſidered in our ſaid court, that the ſaid *J.* and *R.* have their execution againſt the ſaid *J. M.* and *E.* of the damages aforeſaid, by the default of the ſaid *J. M.* and *E.* And whereupon our ſheriff of *S.* at a certain day now paſt, ſent to our juſtices at *Weſtminſter*, that the ſaid *J. M.* and *E.* had no goods or chattels in his bailiwic, whereof the ſaid damages could be made, whereas it is teſtified in our ſaid court, that the ſaid *J. M.* and *E.* have ſufficient goods and chattels in your county, whereof the ſaid damages may be made; and have there this writ. Witneſs, *&c.*

Sci. fa.

Teſtatum.

Fi. fa. *on a judgment by a feme execu-*

GEORGE the ſecond, *&c.* To, *&c.* We command you, that of the goods and chattels

chattels of *W. C.* late of, *&c.* otherwiſe called, *&c.* in your bailiwic, you cauſe to be made as well a certain debt of one hundred and ſixty pounds, which *E. W.* widow, executrix of the teſtament and laſt will of *S. W.* deceaſed, in our court, before our juſtices at *Weſtminſter* recovered againſt him, as ſixty ſhillings, which to the ſaid *E.* in our ſaid court were adjudged for her damages, which ſhe had by occaſion of the detaining that debt; and have that money before our juſtices at *Weſtminſter* on the octave of the Purification of the bleſſed Virgin *Mary*, to render to *R. W.* whom the ſaid *E.* married after the ſaid judgment was given, and to the ſaid *E.* for the debt and damages aforeſaid, whereof the ſaid *W.* is convicted; and whereupon in our ſaid court before our juſtices at *Weſtminſter* it is conſidered that the ſaid *R.* and *E.* have execution againſt the ſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* And have there this writ. Witneſs, *&c.*

trix while ſole, whereupon execution is awarded on a Sci. fa. *at the ſuit of the huſband and wife.*

Sci. fa.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you cauſe to be made of the lands and chattels in your bailiwic, of *T. S.* late, *&c.* gentleman, thirty-eight pounds; and of the lands and chattels in your bailiwic of *F. F.* late, *&c.* ſmith, other thirty-eight pounds; and of the lands and chattels in your bailiwic of *T. P.* late of, *&c.* other

A Fieri facias *againſt bail after* Sci. fa.

thirty-eight pounds. Which ſaid ſeveral ſums of thirty-eight pounds each of them the ſaid *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, ſeverally acknowledged themſelves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the uſe and behoof of the ſaid *E. P.* and *W. F.* to be levied; which ſaid recognizance in that ſame term at *Weſtminſter* aforeſaid is inrolled, as by the ſaid record and proceedings thereon on our ſaid court before our juſtices aforeſaid remaining manifeſtly appeareth; and have that money before our juſtices at *Weſtminſter* from the day of *Eaſter* in fifteen days, to render to the ſaid *E.* and *W.* for the debt aforeſaid, according to the form of the ſaid recognizance, whereof they are convicted; and whereupon it is conſidered in our ſaid court, that the ſaid *E.* and *W.* have execution againſt the aforeſaid *T. S. F.* and *T. P.* of the ſaid ſeveral ſums of thirty-eight pounds by them in form aforeſaid acknowledged, by the default of them the ſaid *T. S. F.* and *T. P.* And have there this writ. Witneſs, *&c.*

Sci. fa.'

Award of Fi. fa. *and continuances.*

And hereupon the ſaid [*plaintiff*] prayeth the writ of our lord the king to be directed to the ſheriff of the county aforeſaid, to levy the ſaid hundred pounds of the goods and chattels of the ſaid [*defendant*] for the damages aforeſaid. And it is granted to him

him returnable here [*the return*] at which day comes here the ſaid [*plaintiff*] by his attorney aforeſaid. And the ſheriff hath not ſent the ſaid writ; therefore let another writ be made to him in form aforeſaid, *&c.* returnable here [*the return*] at which day [*ut ſupra.*]

Fi. fa. *in debt after* Sci. fa. *for executors on judgment recovered by teſtator.*

GEORGE the ſecond, *&c.* To the ſheriff of *B.* greeting. We command you that of the goods and chattels of *J. B.* late of *C. W.* in your county, innholder, otherwiſe called, *&c.* you cauſe to be levied as well a certain debt of 590*l.* which *J. D.* in our court before our juſtices at *Weſtminſter* recovered againſt him, as 50*s.* which to the ſaid *J. D.* in our ſaid court were adjudged for his damages which he had ſuſtained by reaſon of detaining that debt. And have you there that money before our juſtices at *Weſtminſter* from the day of St. *Michael* in three weeks, to render to *W. C.* and *T. B.* executors of the teſtament and laſt will of the ſaid *J. D.* for the debt and damages aforeſaid. And whereupon it is conſidered in our ſaid court, that the aforeſaid *W.* and *T.* have execution againſt the ſaid *J. B.* of the debt and damages aforeſaid, by the default of the ſaid *J. B.* whereof he is convicted; and have you there this writ. Witneſs, *&c.*

The firſt *Fieri facias* muſt be directed to the ſheriff of the county where the action was laid; and on a return of *Nulla bona* you

may have execution into any other county you ſhall think proper.

Elegit *in debt.*

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas *E. F.* lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court, recovered againſt *B. C.* late of, *&c.* as well a certain debt of fifty pounds, as ten ſhillings, which in our ſaid court were adjudged to the ſaid *E.* for his damages which he had by occaſion of the detaining that debt, whereof the ſaid *B.* is convicted. The ſaid *E.* afterwards came into our ſaid court, and by the ſtatute in that caſe made and provided choſe to have deliver'd to him all the goods and chattels of the ſaid *B.* except his oxen and the beaſts of his plow, and alſo a moiety of all his lands and tenements in your bailiwic, to hold to him the goods and chattels aforeſaid, as his own proper goods and chattels; and alſo to hold the ſaid moiety as his freehold to him and his aſſigns, according to the form of the ſaid ſtatute, until the ſaid debt and damages ſhall be thereof levied; and therefore we command you, that all the ſaid goods and chattels of the ſaid *B.* except the oxen and beaſts of his plow, and alſo a moiety of all his lands and tenements in your bailiwic, whereof the ſaid *B.* on the octave of St. *Hilary* in the year of our reign, on which day the ſaid judgment was given, or at any time after, was ſeiſed, you cauſe to be delivered by a reaſonable price and extent, to hold to him the

the ſaid goods and chattels as his own proper goods and chattels; and to hold the ſaid moiety as his freehold to him and his aſſigns, according to the form of the ſaid ſtatute, until the debt and damages aforeſaid ſhall be thereof levied; and in what manner you ſhall execute this writ make appear to our juſtices at *Weſtminſter*, on the morrow of *All Souls*, under your ſeal, and the ſeals of them, by whoſe oath you ſhall make the ſaid extent and appraiſement; and have there this writ. Witneſs, *&c.*

Elegit *in treſpaſs.*

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas *L. R.* lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court, recovered againſt *H. H.* late of, *&c.* thirty-five pounds, which in our ſaid court were adjudged to the ſaid *L.* for his damages, which he had by occaſion of a certain treſpaſs done to the ſaid *L.* by the ſaid *H.* with force and arms and againſt our peace at *W.* in your county, whereof the ſaid *H.* is convicted. The ſaid *L.* afterwards came into our court, *&c.* [*as before, uſing the word* damages *inſtead of* debt and damages.]

Elegit *after a Sci. fa.*

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas lately in our court before our juſtices at *Weſtminſter* it was conſidered that *E. S.* have execution againſt *H. S.* late of, *&c.* otherwiſe called, *&c.* by the default of the ſaid *H. S.* as well of a certain debt of twenty pounds, which the ſaid *E.*

in our court before our juſtices at *Weſtminſter* recovered againſt the ſaid *H.* as of fifty ſhillings, which in our ſaid court were adjudged to the ſaid *E.* for his damages, which he had by occaſion of detaining that debt, whereof the ſaid *H.* is convicted. The ſaid *E.* afterwards came, *&c. as before.*

Elegit *on a judgment by* Sci. fa. quare damna aſſideri non debent poſt mortem querentis port. per executricem.

GEORGE the ſecond, *&c.* To the ſheriff of *Berks*, greeting. Whereas *E. K.* executrix of the teſtament and laſt will of *G. K.* her late huſband, deceaſed, lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *M. G.* late of *London*, widow, one hundred and ſeventeen pounds and ten ſhillings, which in our ſame court before our juſtices at *Weſtminſter* aforeſaid, were adjudged to the ſaid *E.* according to the form of the ſtatute in that caſe lately made and provided by the default of the ſaid *M.* for the damages of the ſaid *G.* which he had ſuſtained by occaſion of not performing certain promiſes and undertakings made by the ſaid *M.* to the ſaid *G.* in his life-time, whereof the ſaid *M.* is convicted. And the ſaid *E.* afterwards came into our ſame court, and by the ſtatute in ſuch caſe made and provided choſe to have delivered to her all the goods and chattels of the ſaid *M.* except the oxen and beaſts of her plow. And likewiſe a moiety of all her lands and tenements in your bailiwic, to hold to her the ſaid *E.* the goods and chattels aforeſaid as her own proper goods and chattels. And alſo to hold the ſaid

Stat. 8 & 9 W. 3. c.

ſaid moiety of the ſaid lands and tenements as her own freehold, to her the ſaid *E.* and her aſſigns according to the form of the ſtatute aforeſaid, until ſhe hath levied the damages aforeſaid. And therefore we command you, that without delay you do deliver to the ſaid *E.* by a reaſonable price and extent, all the goods and chattels of the ſaid *M.* except the oxen and beaſts of her plow. And in like manner the moiety of all her lands and tenements in your bailiwic, of which the ſaid *M.* was ſeiſed on the octave of ſaint *Hilary* in the eleventh year of our reign, on which day judgment was thereof given, or at any time afterwards, to hold to her the ſaid *E.* and her aſſigns according to the form of the ſtatute aforeſaid, until ſhe ſhall have levied thereof the damages aforeſaid. And in what manner you ſhall execute this our writ make manifeſt to our juſtices at *Weſtminſter* aforeſaid, on the morrow of *All Souls*, under your ſeal, and the ſeals of them by whoſe oath you ſhall make the extent and appraiſement thereof. And have you there this writ. Witneſs, *&c.*

A man may award on the roll *Elegits* into as many counties as he pleaſes, and execute all or any at his pleaſure; but it is ſaid, if he awards an *Elegit* into one county, extends the lands upon the writ, and afterwards files it, he is barred, and cannot ſue out an *Elegit* into any other county. *May have ſeveral* Elegits.

Where by inquiſition on an *Elegit* it is found that the plaintiff was ſeiſed of the

lands at the time the judgment was given, upon an ejectment (which muſt be) brought to recover the poſſeſſion, the plaintiff need only give in evidence the copy of the judgment, *Elegit* and inquiſition thereupon filed, and is not bound to prove the party ſeiſed at the time of the judgment; and if he was not ſeiſed, it muſt be proved by the other ſide.

Of PROCEEDINGS *for and againſt* attornies.

WHERE an attorney is plaintiff, the firſt proceſs is an attachment of privilege, which is in the following form:

Attachment for an attorney. Liber Intrat. 220. k. V. Stat. 13 Car. 2. Stat. 2. c. 2. ſ. 4.

GEORGE the ſecond, *&c.* To, *&c.* greeting. Attach *T. R.* ſo that you may have him before our juſtices at *Weſtminſter* on *Saturday* next after the morrow of *All Souls*, to anſwer *S. B.* gent. one of the attornies of our court of the bench, according to the liberties and privileges of the ſame court for ſuch attornies and other miniſters of the ſame bench from time out of mind uſed and approved in the ſame, of a plea of treſpaſs [*as the action is.*] And have you there this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the day of in the year of our reign

Cooke.

If

If the writ requires bail you muſt mark the ſum ſworn to on the back, thus:——— Affidavit for 42 *l.*——And alſo the day it is ſued out.

You muſt make out a *Præcipe*, containing the plaintiff's and defendant's names, not exceeding four in the whole, with the return of the writ, day of ſigning, and the agent's or attorney's name, who ſues out the ſame; this *Præcipe* you muſt leave with the prothonotary, who without fee or reward is to enter the ſame on a remembrance roll, to be kept in his office for that purpoſe; and he is not to ſign any attachment of privilege unleſs ſuch *Præcipe* be left in his office at the time of ſigning thereof. *Hil.* 11 *Geo.* 2.

Præcipe *to be left with the prothonotary at the time of ſigning the writ.*

The form of the Præcipe.

Suffolk. Attachment of privilege for *S. B.* gentleman, one of the attornies, *&c.* againſt *T. R.* Debt.

R. R. Agent, 7 *Oct.* 1738. *Ret.* Saturday *next after the morrow of* All Souls.

Affidavit for 42 *l.*

You pay nothing to the prothonotary for ſigning this writ, and only one peny for the ſeal.

If the attachment requires only a common appearance, a copy muſt be ſerved with a notice, as in *fol.* 67, 69, and the appearance muſt be entered with the prothonotary who ſigned the writ, and if it requires bail, his clerk of the dockets prepares the bail-piece

Of appearing putting in bail thereto.

or

or recognizance, and attends a judge or the court, when the ſame is entered into, and the bail juſtify, or freſh bail is added, in the ſame manner as the filacer does on meſne proceſs by original.

The declaration at the ſuit of an attorney begins in this manner:

Cooke.

Eaſter *term in the twelfth year of the reign of king* George *the ſecond.*

Declaration by an attorney for fees and diſburſements.

Middleſex, *to wit,* P. B. late of, *&c.* was attached by a writ of our lord the king of privilege, iſſuing out of the court here to anſwer *L. R.* gentleman, one of the attornies of the court of our lord the king of the bench here, according to the liberties and privileges of the ſame court, for ſuch attornies and other miniſters of the ſame bench time out of mind uſed and approved in the ſame, of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *L.* in his proper perſon complaineth, that whereas the ſaid *P.* on the nineteenth day of *December* in the year of our lord one thouſand ſeven hundred and thirty-eight, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, was indebted to the ſaid *L.* in thirty pounds of lawful money of *Great Britain*, for work and labour as an attorney and ſolicitor before that time done and performed by the ſaid *L.* upon the retainer, and at the ſpecial inſtance and requeſt, of the ſaid *P.* in and about the proſecuting,

ſecuting, defending and ſoliciting diverſe cauſes, ſuits and buſineſſes, and for money laid out, expended and paid by the ſaid *L.* at the like ſpecial inſtance and requeſt of the ſaid *P.* in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes, and for money due to the ſaid *L.* for his fees due, and of right payable to him in that reſpect, and being ſo indebted, he the ſaid *P.* in conſideration thereof, afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *L.* that he the ſaid *P.* would pay to the ſaid *L.* the ſaid ſum of money when he ſhould be thereunto requeſted. *And whereas* the ſaid *P.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, in conſideration that the ſaid *L.* upon the retainer of the ſaid *P.* and at his ſpecial inſtance and requeſt, had before that time done and performed other work and labour as an attorney and ſolicitor in and about other cauſes, ſuits and buſineſſes, and laid out, expended and paid other money in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes laſt mentioned; undertook, and then and there faithfully promiſed the ſaid *L.* that he the ſaid *P.* would pay to the ſaid *E.* ſo much money as he reaſonably deſerved to have for his laſt mentioned work and labour; and ſo much money as he had laid out, expended and paid in and about the proſecuting, defending and ſoliciting the ſaid laſt

Quantum meruit *thereon.*

laſt mentioned cauſes, ſuits and buſineſſes, and ſo much money as was due to the ſaid *L.* for his fees due, and of right payable to him in that reſpect, when he the ſaid *P.* ſhould be thereunto requeſted. And the ſaid *L.* averreth, that he reaſonably deſerved of the ſaid *P.* for his ſaid laſt mentioned work and labour, other thirty pounds of like lawful money, and that he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits and buſineſſes, other thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the ſaid *L.* for his fees, due and of right payable to him in that reſpect, *to wit*, at the pariſh aforeſaid in the county aforeſaid, whereof the ſaid *P.* afterwards, that is to ſay, on the ſame day and year aforeſaid, there had notice. *And whereas alſo* the aforeſaid *P.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, was indebted to the ſaid *L.* in fourteen pounds of like lawful money, for the like ſum of money by the ſaid *L.* at the like ſpecial inſtance and requeſt of the ſaid *P.* before that time expended, laid out, diſburſed and paid; and being ſo indebted, the ſaid *P.* afterwards, *to wit*, on the ſame day and year at the pariſh aforeſaid in the county aforeſaid, in conſideration thereof undertook, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *P.* the ſaid fourteen pounds to the ſaid *L.* when he ſhould be thereunto requeſted, would well and truly pay and content;

Indeb. aſſump. *for money laid out.*

ent; *Yet* the ſaid *P.* in no wiſe regarding his *Breach.*
aid ſeveral promiſes and undertakings made
n form aforeſaid, but contriving and fraudu-
ently intending craftily and ſubtilly to de-
ceive and defraud the ſaid *L.* in this reſpect,
ath not paid to the ſaid *L.* the ſaid ſeveral
ums of money, or any of them, or any part
hereof (altho' the ſaid *P.* afterwards, *to wit*,
n the thirtieth day of *December* in the ſame
ear, at the pariſh aforeſaid in the county
foreſaid, was requeſted by the ſaid *L.* ſo to
o) but has hitherto refuſed, and ſtill doth
efuſe to pay the ſame to the ſaid *L.* to the
amage of the ſaid *L.* of thirty pounds;
nd thereof he bringeth ſuit, *&c.*

Pledges for proſecuting { *John Doe,* / *Richard Roe.*

If an attorney be defendant, a bill muſt
e prepared in the following form, according
o the nature of the action.

Cooke.

Of Eaſter *term in the eighth year of the reign of king* George *the ſecond.*

To the juſtices of our lord the king of the bench.

Middleſex, *to wit*, R. *R.* gentleman, adminiſtrator of all and ſingular the goods nd chattels, and credits of *R. F.* clerk deceaſed, *Bill againſt an attorney at the ſuit of an adminiſtrator.*

ceaſed, at the time of his death, who died inteſtate, by *J. C.* his attorney complaineth of *T. J.* gentleman, one of the attornies of the court of our now lord the king of the bench here preſent here in court in his proper perſon, for that, whereas the ſaid *T.* in the life-time of the ſaid *R. F. to wit*, on the ninth day of *April* in the year of our lord 1734. at *Weſtminſter* in the county of *Middleſex* aforeſaid, was indebted to the ſaid *R. F.* in his life-time in 250*l.* of lawful money of *Great Britain*, for ſo much money by the ſaid *T.* to the uſe of the ſaid *R. F.* before that time had and received; and being ſo indebted the ſaid *T.* afterwards, *to wit*, on the ſame day and year at *Weſtminſter* aforeſaid in the county aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *R. F.* in his life, to pay him the ſaid ſum of money when he ſhould be requeſted to pay the ſame; *Yet* the aforeſaid *T.* not at all regarding his promiſe and undertaking aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *R. F.* in his life-time, and the ſaid *R. R.* ſince the death of the ſaid *R. F.* hath not yet paid the aforeſaid ſum of money, or any part thereof, to the ſaid *R. F.* in his life-time, or to the ſaid *R. R.* ſince the death of the ſaid *R. F.* (to which ſaid *R. R.* ſince the death of the ſaid *R. F. to wit*, on the 16th day of *June* in the year of our lord 1735. at *Weſtminſter* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods, chattels and credits which

Indeb. aſſump. *for money had and received in life-time of inteſtate.*

Breach.

Adminiſtration committed.

which were the goods, chattels and credits of the ſaid *R. F.* at the time of his death, by *William*, by divine providence archbiſhop of *Canterbury*, primate of all *England* and metropolitan, was committed) altho' the aforeſaid *T.* in the life-time of the ſaid *R. F.* by him the ſaid *R. F.* and after the death of him the ſaid *R. F.* by the aforeſaid *R. R. to wit*, on the 17th day of *June* in the year of our lord 1735. aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted ſo to do; but he hath abſolutely refuſed to pay the ſame to the ſaid *R. F.* and ſince the death of the ſaid *R. F.* hath, and ſtill doth refuſe to pay the ſame to the ſaid *R. R.* to the damage of the ſaid *R. R.* of 300*l.* And thereupon he prayeth relief, *&c.* And the ſaid *R. R.* bringeth here into court the letters of adminiſtration aforeſaid, to him as aforeſaid granted, which teſtify the granting of the adminiſtration aforeſaid to the ſaid *R. R.* in form aforeſaid, bearing date the day and year in that reſpect above-mentioned, and ſo forth. *Profert.*

Pledges for proſecuting, *to wit*, { *John Doe*, and *Rich. Roe.*

Cooke,

Cooke.

Hilary *term in the fourteenth year of the reign of king* George *the ſecond.*

To the juſtices of our lord the king of the bench.

Bill againſt an attorney on a promiſe to deliver back a gold watch, or pay 14 guineas for it, by a certain day.

Middleſex, *to wit,* *J. T.* by *E. B.* his attorney complaineth of *J. H.* gent. one of the attornies of the court of our now lord the king of the bench here preſent here in court in his proper perſon, for that on the 12th day of *November* in the year of our lord 1739. at the pariſh of St. *Clement Danes* in the county of *Middleſex*, in conſideration that the ſaid *J. T.* at the requeſt of the ſaid *J. H.* then and there delivered to the ſaid *J. H.* a gold watch of the ſaid *J. T.* and the ſaid *J. H.* then and there received the ſame gold watch of the ſaid *J. T.* he the ſaid *J. H.* undertook, and then and there faithfully promiſed the ſaid *J. T.* to deliver back the ſaid gold watch to the ſaid *J. T.* or to pay the ſum of 14*l.* 14*s.* to the ſaid *J. T.* for the ſaid gold watch, on or before the firſt day of *December* then next enſuing; *yet* the ſaid *J. H.* not regarding his ſaid promiſe and undertaking, but deviſing and fraudulently intending to deceive and defraud the ſaid *J. T.* in this behalf, hath not yet delivered back the ſaid watch to the ſaid *J. T.* nor paid him the ſaid 14*l.* 14*s.*

Breach.

nor

nor any part thereof (although the ſaid *J. H.* afterwards, *to wit*, on the firſt day of *December* in the year aforeſaid, and often afterwards at the pariſh aforeſaid in the county aforeſaid, was requeſted by the ſaid *J. T.* ſo to do) but hath hitherto refuſed, and ſtill doth refuſe ſo to do. *And whereas* the ſaid *J. H.* on the 3d day of *June* in the year of our lord 1740. at the pariſh aforeſaid in the county aforeſaid, made his note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year laſt mentioned, by which note the ſaid *J. H.* promiſed to pay to the ſaid *J. T.* or his order, the ſum of 3*l.* 5*s.* on demand, for value received; by reaſon whereof, and alſo by force of the ſtatute in ſuch caſes made and provided, the ſaid *J. H.* became liable to pay to the ſaid *J. T.* the ſaid 3*l.* 5*s.* according to the tenor and effect of the ſaid note. And being ſo liable the ſaid *J. H.* in conſideration thereof, afterwards, *to wit*, on the day and year laſt mentioned, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. T.* to pay him the ſaid 3*l.* 5*s.* according to the tenor and effect of the ſaid note. *And alſo whereas* the ſaid *J. H.* afterwards, *to wit*, on the 10th day of *January* in the year of our lord 1740. at the pariſh aforeſaid in the county aforeſaid, was indebted to the ſaid *J. T.* in the ſum of 20*l.* of lawful money of *Great Britain*, for diverſe goods, wares and merchandizes before that time ſold and delivered

On a promiſſory note drawn by defendant and payable to plaintiff.

Indebitatus aſſumpſit *for goods ſold and delivered.*

by the ſaid *J. T.* to the ſaid *J. H.* at his requeſt; and being ſo indebted the ſaid *J. H.* in conſideration thereof afterwards, *to wit*, on the day and year laſt abovementioned, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. T.* to pay him the ſaid 20*l.* when he the ſaid *J. H.* ſhould be thereunto requeſted. *And alſo whereas* afterwards, *to wit*, on the day and year laſt above mentioned, at the pariſh aforeſaid, in the county aforeſaid, in conſideration that the ſaid *J. T.* had before that time ſold and delivered diverſe other goods, wares and merchandizes to the ſaid *J. H.* at his requeſt, he the ſaid *J. H.* undertook, and then and there promiſed the ſaid *J. T.* to pay him ſo much money for the ſaid goods, wares and merchandizes laſt above mentioned, as the ſame at the time of the ſale and delivery thereof were reaſonably worth when he the ſaid *J. H.* ſhould be thereunto requeſted. And the ſaid *J. T.* in fact ſaith, that the ſaid goods, wares and merchandizes laſt above mentioned, were at the time of the ſale and delivery thereof reaſonably worth other 20*l.* of like lawful money, *to wit*, at the pariſh aforeſaid in the county aforeſaid, whereof the ſaid *J. H.* then and there had notice: *Nevertheleſs* the ſaid *J. H.* not regarding his ſaid three ſeveral promiſes and undertakings laſt above mentioned, but deviſing and fraudulently intending to deceive and defraud the ſaid *J. T.* in this behalf, hath not yet paid the ſaid ſeveral ſums of money, in the

Quantum valebant *thereon.*

Breach.

ſaid

ſaid three laſt promiſes and undertakings mentioned, nor any part thereof, to the ſaid *J. T.* (although the ſaid *J. H.* afterwards, *to wit*, upon the ſame day and year, and often afterwards, at the pariſh aforeſaid in the county aforeſaid, was requeſted by the ſaid *J. T.* ſo to do) but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J. T.* of 40*l.* And thereupon he prayeth relief, &c.

Pledges for proſecuting { *John Doe*, *Richard Roe.*

No bill ſhall be filed againſt an officer, attorney, clerk or miniſter of the court, to be called in court, in order to a forejudger, until the bill be actually entered on record, and a number roll actually put to the bill. *Trin.* 21 *Car.* 2. *No bill to be filed till enter'd on record.*

This rule is in a great meaſure diſuſed. You ingroſs the bill on a piece of parchment ſtamped with a double peny ſtamp, which the prothonotary marks as entred, on being paid for the entry, and it is thereby ſuppoſed to be entered, tho' no number roll is put on the bill; then you carry the bill to *Weſtminſter*, and give it to one of the criers, who calls the defendant in court, for which you pay him 1*s.* After which you give a rule on the bill with the ſecondary for the defendant to appear, for which you pay 1*s.* 4*d. viz.* 1*s.* for the king's duty, and 4*d.* for the rule; and then you file the bill in the *Of filing a bill againſt an attorney, and calling him in court.* *Note, get it ſtamp'd, &c.* *Note, paid in court* 6*d. for the rule.*

the prothonotary's office, for which you pay 4*d*. And heretofore it was not neceſſary to give the defendant any other notice of filing ſuch bill againſt him than the calling him in court as aforeſaid by the crier, which, as all attornies of the court were ſuppoſed to be perſonally preſent in court during the ſitting thereof, was then thought to be ſufficient notice. But many attornies having been ſtruck off the roll on forejudgers for want of other notice; and many living in ſuch remote parts of the kingdom, that it was impoſſible for them to have notice time enough to give order for their appearance before the rule (which was a four day rule) was expired, this practice is altered; and now,

No forejudger till notice in writing.

Where a bill ſhall be filed againſt an attorney of the court, no forejudger ſhall be entered for want of appearance, if the action be laid in *London* or *Middleſex*, and the attorney reſides within 20 miles of *London*, until four days after notice in writing of filing ſuch bill be given to ſuch attorney or his agent, or left at his uſual place of abode, and a rule given for ſuch appearance as uſual; and if ſuch attorney reſides above 20 miles from *London*, or the action be in any other county than *London* or *Middleſex*, no forejudger ſhall be entered till eight days after ſuch notice ſhall be given in manner as aforeſaid, and a rule to appear; the ſaid days to be excluſive of the days of giving ſuch notice. *Hil.* 11 *Geo.* 2.

Common Pleas.

J. T.

againſt

J. H. gent. one of the attornies, *&c.*

Take notice, that a bill was this day filed in the office of *George Cooke*, eſq; chief prothonotary of his majeſty's court of *Common Pleas* at *Weſtminſter*, againſt you the defendant *J. H.* at the ſuit of the plaintiff *J. T.* in an action of treſpaſs upon the caſe on ſeveral promiſes; and unleſs you appear to the ſaid bill on *Monday* the * 26th day of *January* inſtant, you will be forejudged the court. *Notice of a bill being filed.*

E. B.
Attorney for the plt.

23 *Jan.* 1740.
To *J. H.* deft.

If the defendant appears, he enters his appearance with the prothonotary in whoſe office the bill was filed, and which is uſually the office in which the defendant practices, if it be known. If the defendant does not appear, you enter the bill and a forejudger on the roll, in the following form, beginning with a memorandum, as in the *King's Bench.* *Of forejudging an attorney.*

Middleſex, *to wit*, Be it remembered, that on —— the day of in this ſame *Memorandum.*

* This is the day given by the ſecondary's rule which is incluſive; *ſed vide regul. Hil.* 11 *Geo.* 2 *ſupra*, which ſays the days are to be excluſive.

term *G. H.* came here into court by *L. R.* his attorney, and exhibited to the juſtices of our now lord the king of the bench here his bill againſt *J. B.* gent. one of the attornies of the court of our ſaid now lord the king of the bench here preſent here in court in his proper perſon, in a plea of treſpaſs on the caſe, the tenor of which ſaid bill followeth in theſe words; *to wit*, to the juſtices of our lord the king of the bench. *Middleſex*, to wit, *G. H.* by *L. R.* his attorney complaineth of *J. B.* gentleman, *&c.* (*the whole bill to*) and thereupon he prayeth relief, *&c.* Pledges for proſecuting *John Doe* and *Richard Roe*; whereupon the ſaid *J. B.* being ſolemnly called came not, therefore he ſtandeth forejudged from exerciſing his office of attorney of this court for his contumacy, *&c.*

Forejudger.

You pay the prothonotary 2 *s.* for ſigning the forejudger, and the clerk of the warrants 1 *s.* 4 *d.* for ſtriking the defendant off the roll, and then you may proceed againſt him as againſt a common perſon. And ſo muſt every other perſon, for after a forejudger he cannot be proceeded againſt by bill.

But if the defendant enters his appearance in time with the prothonotary, you deliver him a declaration and proceed as in other caſes; but the declaration and iſſue begin with a memorandum in the form aforeſaid, and in both caſes you add the pledges to proſecute at the end of the declaration. You muſt

muſt alſo make all your writs, as *Venire facias*, *&c.* returnable on a day certain, *prox. poſt* the general return day.

A writ of privilege for an attorney ſued in the palace court.

GEORGE the ſecond, *&c.* To the judges of our court of our palace at *Weſtminſter*, and every of them, greeting. Whereas according to the cuſtom of our court of the bench at *Weſtminſter* hitherto uſed and approved in the ſame, the attornies of our ſaid court of the bench ought not, nor have they for time paſt been uſed to be compelled to anſwer before any of our juſtices or officers, or any other ſecular judges whatſoever, except before our juſtices of our ſaid court of the bench, upon any pleas, plaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted.) And we have lately received information of the great complaint of *A. B.* one of the attornies of our ſaid court of the bench, that ſeveral ill-diſpoſed perſons intending to diſquiet the ſaid *A.* have impleaded him by diverſe plaints levied in our court before you, which do not relate to us, whereby he is unable to attend his ſaid office as an attorney upon ſeveral affairs and ſuits depending in our ſaid court of the bench, which if it be permitted will manifeſtly take away, and be not only in derogation and diminution of the juriſdiction of our ſaid court of the bench, and the liberties and privileges thereof, but alſo be to the great detriment of the ſaid *A.* and his clients; and becauſe we are willing that the juriſdiction, privi-

leges and cuſtoms for ſo long time uſed and approved in our ſaid court of the bench, ſhould be inviolably obſerved, we command you and every of you, that you and every of you deſiſt from proceeding in all and ſingular the plaints and pleas whatſoever depending in our ſaid court before you, or any of you, againſt the ſaid *A.* by whatſoever name he ſhall be therein reputed (pleas of freehold, felony and appeals only excepted.) And that you inform the ſaid parties plaintiffs in the ſaid plaints, that they may proſecute their ſaid plaints before our juſtices of the ſaid court of the bench, if they ſhall think it expedient ſo to do. Witneſs, *&c.*

Another where an attorney was arreſted by Capias ad reſpondendum. *Q.?*

GEORGE the ſecond, *&c.* To the ſheriffs of *London*, greeting. Whereas according to the cuſtom of our court of the bench at *Weſtminſter* hitherto uſed and approved of in the ſame, the attornies of our ſaid court of the bench, whilſt they are proſecuting and defending ſuits and actions therein for their clients, ought not, nor have they for time immemorial been uſed to be compelled to anſwer before us, or any of our juſtices or officers, or any other ſecular judges whatſoever, upon any pleas, plaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted) ſave only before our juſtices of our ſaid court of the bench, by bill exhibited in our ſaid court, and not by original writ. And we have lately received information by the complaint of *A. B.* one of the attornies of our ſaid

ſaid court of the bench, proſecuting, following and defending ſuits and actions in our ſaid court for his clients, that ſeveral ill-diſpoſed perſons, intending to diſquiet the ſaid *A. B.* have ſued and proſecuted him by original writ or writs iſſued out of our high court of *Chancery*, returnable before our ſaid juſtices of the bench, and by writ or writs of *Capias ad reſpondendum* iſſued forth thereupon, and have cauſed him the ſaid *A. B.* to be arreſted and detained in your cuſtody, by virtue of one or more of the ſaid writs of *Capias ad reſpondendum*, in ſuits which do not relate to us, or in pleas of freehold, felony or appeals; whereby the ſaid *A. B.* is unable to attend his ſaid office as an attorney, upon the ſaid ſeveral ſuits and actions depending in our ſaid court of the bench, which if it is permitted, will manifeſtly take away and be in derogation and diminution of the liberties and privileges of the ſaid *A. B.* and to the great detriment of the ſaid *A. B.* and his clients; and becauſe we are willing that the juriſdiction, privileges and cuſtoms for ſo long time uſed and approved of in our ſaid court of the bench, ſhould be inviolably obſerved, We command you, that you deſiſt from taking the ſaid *A. B.* into your cuſtody upon any of the ſaid writs of *Capias ad reſpondendum*; and if the ſaid *A. B.* be detained in your cuſtody by any ſuch writ or writs of *Capias ad reſpondendum*, and for no other cauſe, that then you ſuperſede and ſuffer him to go at large, as you will anſwer the contrary at your peril; and that you inform the

party or parties, plaintiff or plaintiffs in the ſuit or ſuits, that he, ſhe or they may proſecute his, her or their ſaid ſuits, before our juſtices of our ſaid court of the bench, by bill or bills to be exhibited to the ſaid juſtices againſt the ſaid *A. B.* if he, ſhe or they think it expedient ſo to do. Witneſs, *&c.*

An attachment againſt an attorney or any other, for a contempt, is in this form:

An attachment for a contempt.

GEORGE the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. Attach *L. J.* gentleman, one of the attornies of our court of the bench [*or* A. B. *any other perſon*] ſo that you may have his body before our juſtices at *Weſtminſter* on next after to anſwer us of and upon ſuch things as on our behalf ſhall be then and there objected againſt him; and have there this writ. Witneſs, *&c.*

Of writs of Habeas corpus cum cauſa.

Writs of Habeas corpus cum cauſa.

THEY are uſed for two purpoſes; *Firſt*, To remove cauſes from inferior courts into this court, to be here determined. *Secondly*, To remove the body of a defendant out of any other priſon into the priſon of the *Fleet*.

As

As to the firſt, many abuſes having been ommitted in the obtaining and proſecuting ch writs, ſeveral laws have been made for medying the ſame.

Before the ſtatute of 43 *Eliz. c.* 5. it as uſual for a defendant in an action comenced in an inferior court, to ſuffer ſuch auſe to be proceeded in till iſſue joined, the ry ſworn, and evidence given for the plainff, before he would deliver into court his rit of *Habeas corpus cum cauſa*, or other rit which he had before ſued out for remoing the ſaid cauſe into this or ſome other f the courts at *Weſtminſter*; and this done nerely to put the plaintiff to as much exence as poſſible, and to come at a knowedge of his evidence. But by that ſtatute it s enacted, That no writ of *Habeas corpus*, r other writ for the removing a cauſe out of ny inferior court, ſhall be received or alowed by the judge or officer to whom the ame ſhall be delivered (but that he may proceed in ſuch cauſe as if no ſuch writ had been delivered to him) except the writ be delivered before the jury, which is to try the iſſue, have appeared, and one of them be ſworn to try the cauſe.

Cauſe not to be removed by Habeas corpus, *unleſs delivered before the jury ſworn.*

And by the ſtatute 21 *Jac.* 1. *c.* 23. no writ of *Habeas corpus*, *Certiorari*, or other writ to remove any action commenced within any city, liberty, *&c.* ſhall be allowed by the ſteward, judge, *&c.* of ſuch court, unleſs delivered before iſſue or demurrer joined in ſuch cauſe, ſo as the ſaid iſſue or demurrer be not joined within ſix weeks after the arreſt

Nor unleſs delivered before iſſue joined.

or

or appearance of the defendant to such action or suit.

If carried back by Procedendo *not to be removed again before judgment.*

And if any action commenced in such court of record in any city, liberty, *&c.* shall be removed by any writ or process, and afterwards be remanded back by writ of *Procedendo*, or other writ, then the said action shall never afterwards be removed or stayed before judgment, by any writ out of any court whatsoever.

Cause not concerning freehold, and not exceeding 5*l.* *not to be removed.*

And if in any action or cause not concerning freehold inheritance, title of lands, lease or rent commenced in any such court of record, it shall appear or be laid in the declaration, that the debt, damages or thing demanded doth not exceed 5 *l.* then such action shall not be stayed by any writ whatsoever, other than writ of error or attaint.

To what courts this extends.

But this act is only to extend to such courts of record in cities, liberties, *&c.* and for so long time only as there shall be an utter barrister of three years standing steward, *&c.* or judge, or recorder of such inferior court, or assistant to such judge of the same inferior court as shall not be an utter barrister of that standing, and not of counsel in any action in such inferior court.

The subtilty of ill-designing people in time got over, and rendered ineffectual this act. A vexatious defendant sued in an inferior court for a debt under 5 *l.* perhaps not 20*s.* would set up a fictitious action against himself for a pretended demand of above 5 *l.* and then bring a *Habeas corpus cum causa*, which would take in both actions, and by this

his contrivance procure the ſmalleſt action to e removed into a ſuperior court, whereby a laintiff, that could not bear the expence of ch ſuperior court, has been neceſſitated to bmit to the loſs of his juſt demands.

But by an act made 12 *Geo.* 1. the judges f ſuch inferior courts, as are deſcribed in he ſtatute 21 *J.* 1. may proceed in ſuch ctions, *&c.* as are therein ſpecified, which ppear or are laid not to exceed 5*l.* although here may be other actions againſt ſuch de- ndants wherein the plaintiffs demands ſhall xceed 5*l.*

Inferior courts may proceed in actions not exceeding 5 l. *tho' there be other actions for above* 5 l.

A writ of *Habeas corpus cum cauſa ad fa- endum & recipiendum*, directed to any ſhe- ff) other than of *London* or *Middleſex*) muſt returnable in court at a day certain in rm, and not be made returnable imme- ately or in the vacation. *Mich.* 1654.

Habeas cor. *directed to any ſheriff (except of* Lond. *or* Mid.) *to be returnable on a day certain in term.*

But ſuch writ of *Habeas corpus* directed to e ſheriffs of *London*, or to the ſheriff of *iddleſex*, may be granted in term or vaca- on returnable immediately. *Same rule. Vide ſtea, fol.* 272.

If to the ſher. of Lond. *or* Mid. *may be returnable immediately.*

Where a writ of *Habeas corpus* made re- rnable immediately is directed to any ſhe- ff, he ought to make his return the ſame y that the writ is delivered, and to bring e body immediately, as required by the it. *Same rule.*

And the ſheriff muſt return ſuch writ the ſame day.

If upon the return of the *Habeas cor- s*, the priſoner is returned charged with proceſs out of the *King's Bench* or *Exchequer*, d with proceſs out of the *Common Pleas*, he may

Priſoner charged with proceſs out of this court, may be committed, tho' charged

with proceſs out of K. B. *or* Exc.

may be committed with thoſe cauſes. *Same rule.*

If charged with proceſs out of this court, returnable at a day to come, may be committed.

And if the priſoner upon a *Habeas corpus cum cauſa* be returned charged with proceſs out of the *Common Pleas*, though it be returnable at a future day, he may be committed with this cauſe. *Same rule.*

Return of a H. C. *muſt be at a day certain.*

All writs of *Habeas corpus* returnable in court, muſt be made returnable at a day certain. *Mich.* 1654. *Hil.* 13, 14 *Car.* 2.

Of removing a priſoner into the Fleet.

If a priſoner in cuſtody of any ſheriff or gaoler, charged with proceſs iſſuing out of the *King's Bench* or *Exchequer*, and not with any proceſs out of this court, be minded to be turned over to the priſon of the *Fleet*, he muſt procure himſelf to be charged with ſome proceſs iſſuing out of the court of *Common Pleas* before he brings his writ of *Habeas corpus*, that he may be returned charged therewith, otherwiſe he can't be turned over.

The form of the writ of Habeas corpus cum cauſa.

A H. C. *to the ſheriff of* Mid. *ret. immediately before a judge.*

GEORGE the ſecond, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you have the body of *T.* detained in our priſon under your cuſtody, as it is ſaid, by whatſoever name he is called the ſame, together with the day and cauſe of the taking and detaining the ſaid *T.* before Sir *John Willes*, knight, our chief juſtice [or before Sir *John Forteſcue Aland*, knight one of our juſtices] of the bench, at his chambers in *Serjeants Inn* in *Chancery Lane* imm

immediately after the receipt of this our writ, to do and receive what our ſaid chief juſtice [or juſtice] ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

If the *Habeas corpus* be returnable before the chief juſtice, any other judge of the court may commit the defendant thereon to the *Fleet.*

The expences of this writ, allowance, &c. *are.*

	l.	*s.*	*d.*
Stamp duty	0	5	0
Judge ſigning	0	4	0
Prothonotary ſigning	0	1	4
Seal	0	0	7
To the ſheriff of *Middleſex* for the allowance	0	4	8
For the return thereof, if but one writ	0	2	4
For every writ more againſt the defendant	0	2	4
For a warrant to the bailiff to conduct the priſoner before a judge, or into court	0	2	4
And if the defendant is in priſon, then for a warrant to the gaoler to deliver him to the bailiff	0	2	4
To the bailiff for bringing him up	0	10	0

Beſides the fees at the judge's chambers, or in court.

GEORGE the ſecond, *&c.* To the judges of our court of our palace at *Weſtminſter*, and to every of them, greeting. *A* Hab. corp. *to the palace court.*

We command you, that you have the body of *J. C.* detained in our priſon under your cuſtody, as it is ſaid, by whatſoever name he may be called in the ſame, together with the day and cauſe of the taking and detaining the ſaid *J. C.* before Sir *John Willes*, knight, our chief juſtice of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*, immediately after the receipt of this writ, to do and receive what our ſaid chief juſtice ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

	l.	*s.*	*d.*
The allowance at the marſhal's court for the firſt cauſe, is —	0	4	8
For every cauſe after the firſt —	0	1	0
[If bailed] the ſtamp duty —	0	2	0
Judge's clerk taking the bail —	0	7	6

Hab. cor. *to an inferior court within 5 miles of* London *may be ret. immediately.*

Writs of *Habeas corpus* directed to the inferior courts of *London*, *Weſtminſter* and *Southwark*, and other courts within five miles of *London*, may be returnable immediately. *Mich.* 1654. and *Hil.* 13 & 14 *Car.* 2. *Vide antea*, *fol.* 269.

Bail taken in abſence of plt. or his attorney to be de bene eſſe; *and if no exception within 20 days, to be filed.*

If bail be taken in the abſence of the plaintiff or his attorney, the ſame is to be taken *de bene eſſe*; and if on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when, and before whom put in, no exception be taken within twenty days, then the bail is to be delivered over to be filed. *Same rules.*

And

And if no exception be taken to bail put in on a *Habeas corpus* before a judge at his chamber, then unleſs the bail be filed within four days after the expiration of the twenty days, a *Procedendo* may be granted, upon a certificate that the bail is not filed. *Same rules.*

If no exception, and bail not filed within 4 days after the 20, a Procedendo.

Where bail is taken of a perſon in cuſtody, the judge's clerk is to deliver the bail to the prothonotary, to be filed if aſſented to; and for that purpoſe the prothonotary's fees are to be depoſited; but the priſoner is not to be diſcharged until the bail be aſſented unto, or the plaintiff over-ruled in open court to accept the ſame upon examination. *Same rules.*

Bail taken of priſoners to be delivered to prothonotary to be filed.

But priſoner not to be diſcharged till bail be aſſented to, &c.

In all caſes where bail was put in in the inferior court, if the cauſe be removed by *Habeas corpus* into this court, bail muſt be put in here on the removal, tho' the debt be under 10*l.* except the defendant be an heir, executor or adminiſtrator, *&c.*

Bail in all caſes of removal where bail below, except.

When the *Habeas corpus* is allowed in the inferior court, and returnable before a judge at his chambers, the plaintiff's attorney muſt get an order from one of the judge's clerks for a *Procedendo*, unleſs the defendant put in bail by the time limited by the order, *viz.* in term-time within four days, and in vacation within ſix days after notice of the rule, a copy of which muſt be ſerved on the defendant's attorney.

Rule for Procedendo *unleſs bail in 4 days in term, and in 6 days in vacation.*

If the plaintiff's attorney diſlike the bail, he ſerves the defendant's attorney with a like

Rule for better bail.

order for a *Procedendo*, unleſs better bail be put in within four days.

Of juſtifying. If this exception to the bail be in vacation-time, 'tis uſual (though I don't ſee to what purpoſe) to juſtify within the four days before a judge at his chambers, for which you pay 2*s.* and then the bail muſt juſtify the firſt day of the next term in court.

The defendant's attorney muſt give the like notice to the plaintiff's attorney of the putting in bail, and juſtifying, as in other caſes.

There is no limited time for the plaintiff's getting an order for a *Procedendo* unleſs bail be put in, and has been done after two terms; but if the defendant had put in bail in time, and the plaintiff had not declared in two terms, the cauſe had been out of court.

Cauſes removed from cities and towns where the judges ſeldom go, to be laid in the county wherein, &c. If a cauſe be removed by *Habeas corpus* out of the courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield* or *Pool*, or other counties where the judges of *Niſi prius* ſeldom go, if the action be tranſitory, it muſt be laid in the county of *Kent*, *Southampton*, *York*, *Staffford* or *Dorſet*, or other county where ſuch city or town lies, and the recognizance is to be taken accordingly. *Mich.* 1654.

A Habeas corpus ad ſatisfaciendum *to the warden of the* Fleet *to bring a priſoner up to be charged in execution.* *GEORGE* the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the warden of our priſon of the *Fleet*, greeting. We command you, that you have before our juſtices at *Weſtminſter*, on *Wedneſ-*

day

day next after three weeks of the Holy *Trinity*, the body of *B. C.* late of *London*, ſtationer, detained in our priſon under your cuſtody, as it is ſaid, by whatſoever name he is called in the ſame, to ſatisfy *S. T.* of 30*l.* for his damages which he has ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings lately made by the ſaid *B.* to the ſaid *S.* as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *B.* is convicted; and further to do and receive what our ſaid court ſhall then and there conſider of him in this behalf; and have there, *&c.* Clift's Entr. 371.

You pay.

	l.	*s.*	*d.*
At the *Fleet* —— ——	0	9	4
In court to the ſecondary ——	0	9	0
Criers —— ——	0	2	0
Tipſtaff bringing up the priſoner	0	10	0
If you draw up the rule you pay the ſecondary more ——	0	2	6
And at the *Fleet* —— ——	0	2	6

A *Habeas corpus ad ſatisfaciendum* may iſſue to the warden of the *Fleet*, or the keeper of any inferior priſon of a liberty or franchiſe, returnable in court at a day certain, and the number roll of the judgment to be indorſed upon the writ by the attorney who ſues it out, and ſuch writ ſhall be a good cauſe of detainer. *Mich.* 1654. *Number roll to be indorſed.*

If a defendant be brought into court upon a *Habeas corpus ad ſatisfaciendum*, he can be charged *On ſeveral judgments there muſt be*

Separate writs of Habeas corpus ad satisfaciendum.

charged in execution upon that judgment only, on which the *Habeas corpus ad satisfaciendum* iſſued; and if there be ſeveral judgments, on which he is to be charged in execution, there be a writ of *Habeas corpus* on each judgment.

Habeas corpus ad ſatisfaciendum *directed to the marſhal of the* King's Bench.

GEORGE the ſecond, *&c.* To the marſhal of our *Marſhalſea* before us, greeting. We command you, that you have before our juſtices at *Weſtminſter*, on *Friday* next after fifteen days of Saint *Martin*, the body of *J. N.* eſq; in our priſon, under your cuſtody detained, as it is ſaid, together with the day and cauſe of the taking and detaining him, by whatſoever name he is called in the ſame, to ſatisfy *L. M.* widow, of 120*l.* which the ſaid *J.* heretofore, *to wit*, on the 7th day of *October* in the year of our reign before Sir *Robert Eyre*, knt. late chief juſtice of our court of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, acknowledged to owe to the ſaid *L.* to be levied of his lands and chattels, as by the ſaid recognizance in our court of the bench aforeſaid remaining of

Sci. fa.'

record plainly appears. And whereupon it is conſidered in our ſaid court, that the ſaid *L.* have execution againſt the ſaid *J.* of the ſaid 120*l.* by the default of the ſaid *J.* And whereupon our ſheriff of *Middleſex* returned to our juſtices at *Weſtminſter* from the day of Saint *Michael* in three weeks laſt paſt, that the ſaid *J.* has no goods or chattels in his bailiwic, whereof he could cauſe to be made

the ſaid 120*l.* or any part thereof; and further to do and receive what our ſaid court ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

GEORGE the ſecond, *&c.* To the judges of our court of our palace at *Weſtminſter*, and to each of them, greeting. Whereas we by our writ lately commanded you, that you ſhould have before Sir *John Willes*, knight, our chief juſtice of the bench, at his chamber ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, immediately after the receipt of the ſaid writ, the body of *R. W.* detained in our priſon under your cuſtody, as it is ſaid, together with the day and cauſe of the taking and detaining him, by whatſoever name the ſaid *R.* is called, to do and receive what our ſaid chief juſtice ſhould conſider of him in that behalf; yet certain cauſes in this behalf ſpecially moving our juſtices of the bench aforeſaid at *Weſtminſter*, We command you, and each of you, that in all ſuits and plaints againſt the ſaid *R.* at the ſuit of *J. W.* in our court before you moved or depending, you proceed with effect according to the law and cuſtom of *England* and the court aforeſaid, notwithſtanding any writ lately directed to you to the contrary. Witneſs, *&c.*

Procedendo *to the palace court on a* Habeas corpus.

GEORGE the ſecond, *&c.* To, *&c.* Whereas, *&c.* (*reciting the writ of* Habeas corpus): We command you, that in all and ſingular

The like in another form.]

ſingular pleas and plaints in our court before you, againſt the ſaid *L.* moved or depending, you proceed with effect, notwithſtanding our ſaid writ of *Habeas corpus* to the contrary lately thereupon directed to you. Witneſs.

On a writ of Habeas corpus *returnable in court.*

GEORGE the ſecond, *&c.* To, *&c.* Whereas we by our writ lately commanded you, that you ſhould have before our juſtices at *Weſtminſter*, on *Wedneſday* next after fifteen days of Saint *Martin*, the body of *G. H.* detained in our priſon under your cuſtody, as it was ſaid, by whatſoever name he was called, together with the day and cauſe of the taking and detaining the ſaid *G.* to do and receive what our ſaid juſtices ſhould conſider of him in this behalf; yet for certain cauſes in this behalf moving our ſaid juſtices at *Weſtminſter*, We command you, that in all and ſingular ſuits and plaints, *&c. as before.*

As the *Habeas corpus* removes all cauſes againſt the defendant in the inferior court, the *Procedendo* carries back all the cauſes that were removed.

Of Prisoners.

A Man having cauſe of action againſt a priſoner was formerly obliged to bring him into court by a *Habeas corpus*, and then declare againſt him; but by the *Stat.* 4 & 5 *W.*

W. & M. it is enacted, That if any perſon be taken or charged in cuſtody at the ſuit of any other perſon, upon any writ or writs iſſuing out of any of the courts of *Weſtminſter*, and impriſoned for want of ſureties for his appearance, the plaintiff in ſuch writ may, before the end of the next term after ſuch writ ſhall be returnable, declare againſt ſuch priſoner in the court out of which ſuch writ or writs ſhall iſſue, whereupon ſuch priſoner ſhall be taken or charged in cuſtody, and may cauſe a true copy of the declaration to be delivered unto ſuch priſoner, or to the gaoler or keeper of the priſon in whoſe cuſtody ſuch priſoner ſhall be, to which declaration the ſaid priſoner ſhall appear and plead; but if he ſhall not appear thereto, the plaintiff ſhall in ſuch caſe have judgment, as if the priſoner had appeared and refuſed to plead.

Where defendant is in cuſtody for want of bail,

Plaintiff before end of next term after return of the writ may declare againſt ſuch priſoner.

And have judgment in default of appearance and plea.

No copy of a declaration ſhall be delivered to any priſoner, until after the proceſs upon which ſuch priſoner ſhall be taken or charged in cuſtody be returnable. *Paſch. 5 W. & M.*

Declaration not to be delivered to priſoner till after the return of the writ.

A priſoner in cuſtody on an attachment for a contempt of the court cannot be charged with a declaration without leave of the court; and the charging a defendant with a *Capias ad ſatisfaciendum*, whilſt he was in cuſtody of the ſheriff of *Middleſex* on an attachment for a contempt of this court, has been held irregular.

Priſoner in cuſtody for a contempt not to be charged with a declaration or execution, without leave.

No rule ſhall be given for the defendant in cuſtody to appear and plead to any declaration

No rule to plead till affidavit of the

delivery of the declaration.

claration againſt him, until an affidavit be filed with the proper ſecondary of the delivery of the copy of ſuch declaration, and of the time when, and the perſon to whom the ſaid copy was delivered, and a copy of the ſaid affidavit ſhall be produced to the prothonotary before judgment ſigned, together with a certificate from the proper officer, that no appearance is entered with him. *Paſ. 5 W. & M.*

Declaration delivered before Menſem paſchæ, *or* Craſtinum animarum, *if defendant appears within* 10 *days after the end of the reſpective term, he may imparl to the next term. Unleſs.*

If a copy of a declaration be delivered before *Menſem paſchæ*, or *Craſtinum animarum*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Eaſter* or *Michaelmas* term reſpectively, judgment may be entered againſt him upon ſuch certificate, if rules have been given; but if he does enter his appearance as aforeſaid within ten days after ſuch term, he ſhall imparl until the next term, unleſs the action be in *London* or *Middleſex*, and the defendant be in priſon within forty miles of the cities of *London* or *Weſtminſter*; and then tho' the priſoner doth appear within ten days after the end of the term, he ſhall plead two days before the eſſoin-day of the next term; and in default thereof, rules having been given, judgment may be entered againſt him as aforeſaid. *Same rule.*

If the declaration be delivered on or after Menſ. paſ. *or* Craſt. anim. *or in* Hil. *or* Trin *term, and deſt.*

If the copy of the declaration be delivered on or after *Menſem paſchæ*, in *Eaſter* term, or *Craſtinum animarum* in *Michaelmas* term, or in *Hilary* term, or in *Trinity*, and the plaintiff ſhall thereupon give a rule to appear

pear and plead, if the defendant enters his appearance two days preceding the eſſoin-day of the next term, he ſhall imparl until the next term; but if he ſhall not appear within that time judgment may be entered againſt him, as aforeſaid. *Same rule.*

appears 2 days before the eſſoin-day of the next term, he may imparl to the next term.

If the writ be returnable in one term, and a copy of the declaration be delivered before the eſſoin-day of the next term, the plaintiff in ſuch declaration may give a rule to appear and plead; and if the defendant doth not enter his appearance and plead by that time the rules are out, judgment may be entered againſt him. *Same rule.*

If declaration delivered before eſſoin-day of the 2d term, defendant to plead without imparlance.

If the declaration be not entered or left in the office before the end of the next term after the return of the writ or proceſs (by which the defendant ſhall be taken or charged in cuſtody) and an affidavit made and filed in manner aforeſaid before the end of twenty days after ſuch term (*Eaſter* term excepted, and within ten days after *Eaſter* term) the priſoner ſhall be diſcharged, upon entering his appearance with the proper officer, by writ of *Superſedeas* made by him, according to the antient practice of this court. *Same rule.*

If no declaration before the end of the 2d term, and affidavit filed, &c. defendant to be diſcharged by Superſedeas.

If any gaoler or keeper of any priſon, having received a copy of a declaration againſt any priſoner in his cuſtody, ſhall ſuppreſs the ſame, or not deliver it forthwith to ſuch priſoner, an attachment ſhall be entered againſt him. *Same rule.*

Gaoler concealing a declaration liable to an attachment.

It ſhall be lawful for any perſon who ſhall have cauſe of action againſt any priſoner of the

Of declaring againſt a priſoner in the Fleet.

the *Fleet*, after filing or entering a declaration to deliver a copy to ſuch defendant in any perſonal action, or to the turnkey or porter of the *Fleet* priſon, and after a rule given to plead, to be out at eight days at moſt, after delivery of ſuch copy of the declaration, and affidavit made of ſuch delivery, to ſign judgment againſt ſuch defendant, as if he had been charged at the bar of the *Common Pleas*. *Stat.* 8 & 9 *W.* 3. *c.* 27. §. 13.

Eight days time to plead.

Common Pleas.

E. T. against *W. W.* late of, &c. } In a plea of treſpaſs on the caſe.

Affidavit of the delivery of a declaration againſt a priſoner.

R. R. of, &c. gent. maketh oath, That he this deponent on the 12th day of *February* laſt, at the lodge of the *Fleet* priſon, delivered a declaration in this cauſe to *W. Manning*, one of the turnkeys of the ſaid priſon, a true copy of which declaration is hereunto annexed. And this deponent alſo ſaith, that the ſaid *W. Manning* did then acknowledge to this deponent, that the defendant *W. W.* was at that time a priſoner in the ſaid priſon of the *Fleet*.

Sworn, &c. *R. R.*

When declaration to be enter'd with prothonotary before delivered.

When the defendant is in the *Fleet*, the declaration muſt be entered with the prothonotary before it be delivered to the defendant, but need not be entered before the delivery

delivery when the defendant is in any other priſon.

In an action on a joint bond where one defendant could not be arreſted, time to declare denied.

In an action of debt againſt two obligors on a joint bond conditioned for payment of money, one of the defendants was arreſted, and continued in cuſtody for want of bail, the other obligor could not be arreſted, and now two terms being near expired, the plaintiff moved the court for time to declare, in regard the defendant in cuſtody would be diſcharged for want of being declared againſt this term, and the other defendant could not be outlawed by that time. But the motion was denied. *Fiſher* v. *Tucker & al. Hil.* 2 *Geo.* 2.

If plaintiff proceed not to judgment in 3 terms incluſive after declaration delivered, defendant to be diſcharged.

If any plaintiff ſhall declare againſt any defendant in cuſtody of the warden of the *Fleet*, or of any ſheriff or other officer, by virtue of any proceſs of this court, and ſhall not further proceed to judgment in three terms after ſuch declaration delivered incluſive of the term in which the declaration ſhall be delivered, the defendant having appeared, the defendant may be diſcharged out of cuſtody by *Superſedeas*, to be allowed by one of the juſtices of this court, if cauſe ſhall not be ſhewn by the plaintiff or his attorney, why ſuch plaintiff had not proceeded before that time to judgment as aforeſaid, upon notice to be given to either of them by the defendant's attorney or agent, and oath made of ſuch notice. *Paſ.* 8 *Geo.* 1.

If plaintiff does not charge defendant in execution

And in caſe any plaintiff having obtained judgment in this court againſt any defendant a priſoner, as aforeſaid, ſhall not charge ſuch defendant,

within 2 terms inclusive, after judgment, defendant may be diſcharged.

defendant, ſo remaining a priſoner, in execution upon the judgment ſo obtained, within two terms next after ſuch judgment ſo had and obtained, including the term in which the ſaid judgment ſhall be ſigned, ſuch defendant ſo remaining in priſon may be diſcharged out of cuſtody, where he ſhall be ſo detained, by *Superſedeas*, to be allowed as aforeſaid, unleſs cauſe ſhewn on like notice and oath. *Same rule.*

Defendant ſurrendering in diſcharge of his bail before declaration delivered, to be declared againſt within two terms, or diſcharged.

If any defendant ſhall render himſelf, or be rendered to the *Fleet* priſon, in diſcharge of his bail, at the ſuit of any plaintiff, where no declaration has been delivered, unleſs the plaintiff ſhall declare againſt ſuch defendant within two terms after ſuch render, ſuch defendant may be diſcharged out of cuſtody, by *Superſedeas* to be allowed by one of the juſtices of this court, if cauſe be not ſhewn to the contrary by the plaintiff, or his attorney, upon notice to either of them given by the defendant's attorney or agent, and affidavit made of ſuch notice. *Same rule.*

If declaration delivered, or judgment had before render, plt. to proceed to judgment in 3 terms after render, and charge deft. in execution within 2 terms after judgment, or deft. to be diſcharged.

But where a declaration has been delivered, or judgment had againſt ſuch defendant ſo rendering himſelf, or being rendered, before ſuch render, unleſs the plaintiff ſhall proceed to judgment upon ſuch declaration delivered within three terms after ſuch render (the defendant having appeared) and charge ſuch defendant in execution within two terms after ſuch judgment obtained, the defendant may be diſcharged in like manner by *Superſedeas*, unleſs cauſe ſhewn upon the like notice and affidavit. *Same rule.*

No

No copy of a declaration delivered at the *Fleet* priſon againſt any priſoner there, ſhall be ſufficient charge to hold ſuch priſoner to bail, or to retain ſuch priſoner in cuſtody for want of bail, unleſs an affidavit that the plaintiff's cauſe of action amounts to ten pounds or upwards be firſt made and filed in the proper prothonotary's office, and an indorſement made by the ſaid prothonotary or his deputy upon ſuch copy of a declaration, ſignifying the ſum of money ſpecified in ſuch affidavit, for which ſum ſo indorſed bail ſhall be required, and no more. *Hil.* 8 *G.* 2.

Copy of declaration not ſufficient to charge priſoner in cuſtody, unleſs affidavit be made that cauſe of action is 10*l.* *or upwards.*

If a defendant arreſted by proceſs iſſuing out of the court of *King's Bench*, and in cuſtody for want of bail, remove himſelf by *Habeas corpus* to the *Fleet* priſon, and the plaintiff charges him in the *Fleet* with a copy of a declaration, he is not obliged to make and annex an affidavit, as by the above rule is directed, in regard there was an affidavit made of the debt when the plaintiff took out the proceſs upon which the defendant was arreſted; but if the declaration comes in as a new charge againſt a priſoner in cuſtody, at the ſuit of another plaintiff, there the above rule muſt be obſerved.

The plt. at whoſe ſuit the priſoner was arreſted need not make ſuch affidavit.

Where a priſoner in the *Fleet*, or other gaol or priſon, is diſcharged, or ordered to be diſcharged by this court, or any of the juſtices thereof, by *Superſedeas* for want of proſecution, and ſuch priſoner is afterwards arreſted or detained in cuſtody by action of debt brought upon the judgment obtained in the cauſe, wherein ſuch priſoner was ſo diſcharged,

A priſoner diſcharged for want of proſecution, if afterwards arreſted on an action on the judgment, a common appearance ſhall be taken.

charged, or ordered to be diſcharged, a common appearance ſhall be accepted for the defendant, in ſuch action of debt upon the judgment. *Hil.* 8 *Geo.* 2. *Vide antea fol.* 66.

Def. diſcharged for want of proceeding to judgment may be afterwards taken in execution; aliter *if diſcharged for want of being charged in execution.*

Where a defendant is diſcharged out of cuſtody for want of the plaintiff's proceeding to judgment, the plaintiff may afterwards proceed to judgment and take the defendant in execution thereon, and the defendant ſhall not be diſcharged; but if the plaintiff has proceeded to judgment, and the defendant be diſcharged out of cuſtody for want of being charged in execution, the defendant is totally diſcharged, and cannot afterwards be taken in execution on that judgment.

A priſoner on contempt not entitled to a day rule.

A priſoner charged with an attachment for a contempt, which is a criminal proſecution, is not intitled to a day rule.

Priſoner arreſted by proceſs of B. R. *removed into the* Fleet, *how to be proceeded againſt, or diſcharged.*

If a defendant in cuſtody on a *King's Bench* proceſs be committed by this court, or a judge of this court, to the priſon of the *Fleet*, before a declaration delivered, the plaintiff cannot declare againſt him in the *King's Bench*, without removing him to the priſon of that court by *Habeas corpus ad reſpondendum*; but he may declare againſt him in this court; and for default of declaring in due time, this court may diſcharge the defendant out of cuſtody. After a declaration delivered, the action muſt be carried on in that court, in which the plaintiff declared, though the defendant be removed to the priſon of another court; and the *Superſedeas*, for default of ſubſequent proceedings, muſt iſſue

iſſue out of that court in which the plaintiff declared.

Where a defendant was ſerved with copy of proceſs, but before declaration delivered became a priſoner in the *Fleet*, and the plaintiff entered an appearance for him, purſuant to the ſtatute, and left a declaration in the office, and gave him notice of it, the court ſet aſide the proceedings, and held, that the declaration ought to have been delivered at the *Fleet*.

How to proceed, when a defendant after being ſerved with copy of proceſs, and before declaration, becomes a priſoner.

GEORGE the ſecond, *&c.* To the ſheriff of *L.* greeting. Whereas *S. S.* is detained in our priſon under your cuſtody, by virtue of our writ returnable, before our juſtices at *Weſtminſter*, on, *&c.* [*the return*] to anſwer *C. C.* in a plea of treſpaſs, and alſo in a plea of treſpaſs on the caſe, to the damage of the ſaid *C.* of 20 *l.* And becauſe it ſufficiently appears to our ſaid juſtices at *Weſtminſter*, that the ſaid *S.* hath appeared in our ſaid court, and found ſufficient bail to anſwer the ſaid *C.* in the plea of treſpaſs on the caſe aforeſaid; therefore we command you, that if the ſaid *S.* is detained in our ſaid priſon under your cuſtody, by occaſion of the ſaid action, and no other, then you permit him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

Superſedeas *on putting in good bail.*

GEORGE the ſecond, *&c.* To chief ſteward of the liberty of *Bury St. Edmunds* in the county of *Suffolk*, greeting. Whereas by our writ we commanded our ſheriff

The like to a ſteward of a liberty.

ſheriff of *Suffolk*, that he ſhould take *J. L.* gent. if he might be found in his bailiwic, and keep him ſafely, ſo that he might have his body before our juſtices at *Weſtminſter*, at a certain day in the ſaid writ ſpecified, to anſwer *W. L.* gent. in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *W.* of 300*l.* and you, by virtue of a certain warrant upon our ſaid writ by the ſheriff of the county aforeſaid thereupon directed to you, took the ſaid *J.* within the ſaid liberty, and ſtill detain him in our priſon under your cuſtody; *Yet* becauſe the ſaid *J.* after the taking aforeſaid found ſufficient bail before our ſaid juſtices at *Weſtminſter*, to anſwer the ſaid *W.* in the pleas aforeſaid; therefore we command you, that if the ſaid *J.* by the occaſion aforeſaid, and no other, is detained in our priſon under your cuſtody, then without delay you cauſe the ſaid *J.* to be diſcharged out of the ſaid priſon, and permit him to go at large. Witneſs, *&c.*

Superſedeas *on entering a common appearance.*

GEORGE the ſecond, *&c.* To the ſheriff of *W.* greeting. Whereas *A. B.* is detained in our priſon under your cuſtody, by virtue of our writ of *Capias* iſſued out of our court before our juſtices at *Weſtminſter*, returnable before our ſaid juſtices, on, *&c.* [*the return*] to anſwer *C. D.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *C.* 30*l.* whereby 20*l.* bail was directed to be taken: But becauſe it ſufficiently appears

appears to our ſaid juſtices at *Weſtminſter*, that the ſaid *A.* has appeared by *W. R.* his attorney to anſwer the ſaid *C.* in the plea aforeſaid, we command you, that if the ſaid *A.* be detained in our priſon under your cuſtody, by virtue of the ſaid writ, and for no other cauſe, that then you ſuffer him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

GEORGE the ſecond, *&c.* To the ſheriff of the city of *Canterbury*, greeting. Whereas by our writ we commanded our late ſheriff of the city of *Canterbury*, that he ſhould take *J. L.* if he ſhould be found in his bailiwic, and keep him ſafely, ſo that he might have his body before our juſtices at *Weſtminſter*, from the day of St. *Michael* in three weeks in the firſt year of our reign, to anſwer *J. A.* in a plea of treſpaſs, and alſo for 16*l.* of debt upon demand; and the ſaid *J. L.* by virtue of our ſaid writ was taken, and is now detained in our priſon under your cuſtody; *Yet* becauſe the ſaid *J. A.* hath in no manner hitherto proceeded in the ſaid pleas againſt the ſaid *J. L.* and the ſaid *J. L.* hath by *L. R.* his attorney appeared in our court before our juſtices at *Weſtminſter*, and is ready to anſwer the ſaid *J. A.* in the pleas aforeſaid, we therefore command you, that if the ſaid *J. L.* by the occaſion aforeſaid, and no other, is detained in our priſon under your cuſtody, then without delay you cauſe the ſaid *J. L.* to be diſcharged out of the

Superſedeas *for want of proſecution, where the deft. was taken by the late ſheriff.*

ſaid priſon, and permit him to go at large. Witneſs, *&c.*

Superſedeas *for want of declaring in two cauſes.*

GEORGE the ſecond, *&c.* To the ſheriff of *W.* greeting. Whereas *A. B.* is detained in our priſon under your cuſtody, by virtue of our writ of *Capias*, returnable before our juſtices at *Weſtminſter*, on, *&c.* [*the return*] to anſwer *C. D.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *C.* 30 *l.* whereupon bail for 20 *l.* was directed to be taken: And whereas the ſaid *A.* is alſo detained in our ſaid priſon under your cuſtody by virtue of another writ of *Capias*, returnable before our ſaid juſtices at *Weſtminſter*, on, *&c.* [*the return*] to anſwer *E. F.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *E.* of 50 *l.* whereupon bail for 40 *l.* was directed to be taken: But becauſe it ſufficiently appeareth to our ſaid juſtices at *Weſtminſter*, that the ſaid *A.* hath appeared in our court before our ſaid juſtices by *W. R.* his attorney, to anſwer as well the ſaid *C.* as the ſaid *E.* in the ſeveral pleas aforeſaid; and that the ſaid *C.* and *E.* have not, and neither of them hath, proceeded to declare againſt the ſaid *A.* in due time after his commitment, purſuant to the rules of our court of *Common Pleas* at *Weſtminſter*; we therefore command you, that if the ſaid *A.* be detained in our priſon under your cuſtody for the cauſes aforeſaid, and no other, that then you immediately diſcharge him

him from your ſaid cuſtody, and ſuffer him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

GEORGE the ſecond, *&c.* To the warden of our priſon of the *Fleet*, greeting. Whereas *J. G.* in the term of the Holy *Trinity* laſt paſt [*if delivered in the vacation, inſert the day*] was charged in our ſaid priſon under your cuſtody with a copy of a declaration, at the ſuit of *T. B.* in an action of debt upon bond for the ſum of But becauſe it ſufficiently appears to our juſtices at *Weſtminſter*, that no affidavit that the ſaid plaintiff's cauſe of action amounted to 10*l.* or upwards, was firſt made and filed in the proper prothonotary's office, nor an indorſement made by the ſaid prothonotary or his deputy upon ſuch copy of the declaration, ſignifying the ſum of money which ſhould have been ſpecified in ſuch affidavit, according to the late rule made for that purpoſe; and becauſe the ſaid *J.* hath appeared by his lawful attorney to anſwer the ſaid *T.* in the plea aforeſaid, we command you, that if the ſaid *J.* be detained in our ſaid priſon under your cuſtody, by virtue of the ſaid declaration, and for no other cauſe, that then you ſuffer him to go at large, as you will anſwer the contrary at your peril. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the ſixth day of *November* in the 30th year of our reign.

Superſedeas *for want of an affidavit of the debt and indorſement on the back of the declaration wherewith defendant was charged in the* Fleet.

GEORGE the ſecond, *&c.* To the ſheriff of *S.* greeting. Whereas *A. B.* is detained

Superſedeas *for want of plaintiff's pro-*

ceeding to judgment within three terms after declaration delivered.

detained in our priſon under your cuſtody, by virtue of our writ of *Capias*, returnable before our juſtices at *Weſtminſter*, on, *&c.* [*the return*] laſt paſt, to anſwer *C. D.* in a plea of treſpaſs; and alſo in a certain plea of debt upon demand for 40*l.* And whereas the ſaid *A.* afterwards, that is to ſay, on the 17th day of *May* laſt paſt, was charged with a declaration at the ſuit of the ſaid *C.* in the plea aforeſaid; but becauſe it appeareth to our juſtices at *Weſtminſter*, that the ſaid *A.* hath appeared in our court of *Common Pleas*, to anſwer the ſaid *C.* in the plea of debt aforeſaid, and that the ſaid *C.* hath not proceeded to judgment againſt the ſaid *A.* within three terms after the delivery of the ſaid declaration, as required by the rules of our ſaid court, we command you, that if the ſaid *A.* be detained in our priſon under your cuſtody, for the cauſe aforeſaid, and no other, you permit him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

Superſedeas *for not charging defendant in execution within two terms after judgment.*

GEORGE the ſecond, *&c.* To the warden of our priſon of the *Fleet*, greeting. Whereas *M. D.* on the 21ſt day of *June* 1739. rendered herſelf to our ſaid priſon of the *Fleet* before *William Forteſcue*, eſq; one of our juſtices of our court of the bench in diſcharge of her bail, at the ſuit of *U. R.* and *H. C.* for 40*l.* And becauſe the ſaid *U.* and *H.* have not proceeded to charge the ſaid *M.* in execution within two terms next after judgment obtained, according to the

rules

rules of our ſaid court of the bench, we therefore command you, that if the ſaid *M.* be detained in your cuſtody for that, and no other cauſe, that then you ſuffer her to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

Superſedeas *for want of proceeding to judgment and execution at the ſuit of ſeveral plaintiffs.*

GEORGE the ſecond, *&c.* To the warden of our priſon of the *Fleet*, greeting. Whereas it hath been certified to our juſtices of our court of the bench at *Weſtminſter*, that *A. B.* was committed to our ſaid priſon of the *Fleet* for want of bail, upon our writ of *Habeas corpus*, at the ſuit of *C. D.* in a plea of treſpaſs, and alſo in a certain plea of debt upon demand for 45*l.* And on the 27th of *May* 1735. was charged with a declaration at the ſuit of *E. F.* in a plea of treſpaſs on the caſe for 50*l.* And on the 30th day of the ſame month was charged with a declaration at the ſuit of the ſaid *C.* in a plea of debt for 40*l.* And alſo on the 13th day of *June* then next following was charged with another declaration at the ſuit of *G. H.* in a plea of treſpaſs on the caſe for 20*l.* And for that it appeareth to our ſaid juſtices, that the ſaid *C.* and *E.* or either of them, have not proceeded to charge the ſaid *A.* in execution in due time in the ſaid cauſes or either of them, according to the rules and orders of our ſaid court; and alſo, for that it appeareth to our ſaid juſtices that the ſaid *G.* hath not in due time proceeded to judgment againſt the ſaid *A.* in the ſaid cauſe, according to the rules and orders of

our ſaid court; and becauſe the ſaid *A.* hath appeared in our ſaid court by his lawful attorney in the ſeveral actions aforeſaid; therefore, *&c.*

Proceedings in ejectment.

An action of treſpaſs and ejectment, what it is.

AN action of treſpaſs and ejectment is given to a tenant for term of years, who is ouſted of his term, and he may thereby recover the remainder of his term and damages. It is now uſed as the moſt common action for trying titles to land in the room of many real actions.

This action is generally grounded on a mere fiction. The perſon who claims the meſuages or lands in diſpute, and who is called the leſſor of the plaintiff, is ſuppoſed to have made a leaſe of the premiſſes to the plaintiff for a term of years yet in being, the plaintiff is ſuppoſed to have entered by virtue of that leaſe, and the defendant, who is termed the caſual ejector (being only a nominal perſon) is ſuppoſed to have entered upon the plaintiff and turned him out of poſſeſſion.

Of commencing this action.

The common method of commencing this action is by delivering a copy of the declaration to the tenant in poſſeſſion of the premiſſes, with a notice thereunder written to appear and defend his title, or elſe that the defendant, the caſual ejector, will ſuffer judgment to go by default, and thereby the tenant be put out of poſſeſſion.

The

The tenant in poſſeſſion may be admitted to defend his title on entering into the common rule, *viz.* to become defendant in the room of the defendant the caſual ejector, receive a declaration, plead the general iſſue, and at the trial to confeſs the leaſe, entry and actual ejectment of the plaintiff.

The tenant in poſſeſſion may be admitted to defend his title, on entering into the common rule.

Cooke.

Trinity *term in the ſeventh year of king* George *the ſecond.*

Middleſex, *to wit,* JOHN *Doe*, late of the pariſh of St. *George the Martyr* in the county of *Middleſex*, yeoman, was attached to anſwer *Richard Roe* of a plea, wherefore with force and arms he entered into five meſuages with the appurtenances in the pariſh of *Stebon-Heath*, otherwiſe *Stepney*, in the county of *Middleſex*, which *Thomas Bland* and *Conrade de Golls* demiſed to the ſaid *Richard* for a term which is not yet expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *Richard*, and againſt the peace of our ſovereign lord the king; and whereupon the ſaid *Richard* by *Joſeph Dobbyns* his attorney complaineth, that whereas the ſaid *Thomas* and *Conrade* on the 25th day of *April* in the 6th year of the reign of his ſaid majeſty, at the ſaid pariſh of *Stebon-Heath*, otherwiſe *Stepney*, in the county aforeſaid, had demiſed to the ſaid *Richard* the ſaid tenements with the appurtenances; to

Declaration in ejectment of five meſuages.

have and to hold the ſaid tenements with the appurtenances to the ſaid *Richard* and his aſſigns, from the 24th day of *April* aforeſaid in the year aforeſaid, unto the full end and term of five years thence next enſuing and fully to be complete and ended; by virtue of which demiſe the ſaid *Richard* entered into the ſaid tenements with the appurtenances, and was poſſeſſed thereof; and the ſaid *Richard* being ſo poſſeſſed thereof, the ſaid *John* afterwards, *to wit*, on the ſaid 25th day of *April* in the ſaid 6th year, with force and arms, *&c.* entered into the ſaid tenements with the appurtenances which the ſaid *Thomas* and *Conrade* had demiſed to the ſaid *Richard* in form aforeſaid, for the term aforeſaid which is not yet expired, and ejected the ſaid *Richard* from his ſaid farm, and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereupon the ſaid *Richard* ſaith, that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

The notice. Mr. *John Wilkinſon*, I am informed that you are in poſſeſſion of, or claim title to, the premiſſes in this declaration mentioned, or to ſome part thereof; and I being ſued in this action as a caſual ejector, and having no claim or title to the ſaid premiſſes, do adviſe you to appear on the firſt day of the next *Michaelmas* term in his majeſty's court of *Common Pleas* at *Weſtminſter*, by ſome attorney of that court, and then and there by rule of the ſame court, to cauſe yourſelf to be

be made defendant in my ſtead, otherwiſe I ſhall ſuffer judgment therein to be entered againſt me by default, and you will be turned out of poſſeſſion. I am

Your humble Servant,
John Doe.

Cooke.

Eaſter *term in the thirteenth year of king* George *the ſecond.*

Suffolk, *to wit,* *T.* *C.* late of *London*, gentleman, was attached to anſwer *E. S.* in a plea, wherefore with force and arms he entered into the manors of *K.* otherwiſe *K. H. C. H. B.* and *G. W.* and 50 meſuages, 50 barns, 50 ſtables, 50 gardens, 20 cotages, one water corn-mill, one wind-mill, 1000 acres of land, 1000 acres of meadow, 1000 acres of paſture, 500 acres of wood, and 500 acres of furz and heath, with the appurtenances, in the pariſhes of *G. W. L. W. B.* and *K.* in the ſaid county of *Suffolk*, which the honourable *M. G.* ſpinſter, demiſed to the ſaid *E.* for a term which is not yet expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *E.* and againſt the peace of our ſovereign lord the king; and whereupon the ſaid *E.* by *J. W.* his attorney complaineth, that whereas the ſaid *M.* on the firſt day of *January* in the 13th year of the reign of his ſaid majeſty, at *Ipſwich* in the county aforeſaid, had demiſed to the ſaid

Declaration in ejectment of manors, meſuages, barns, ſtables, &c.

ſaid *E.* the ſaid manors and tenements, with the appurtenances; to have and to hold the ſaid manors and tenements, with the appurtenances, to the ſaid *E.* and his aſſigns, from the 29th day of *September* then laſt paſt, to the full end and term of ſeven years then next following, and fully to be complete and ended: By virtue of which ſaid demiſe the ſaid *E.* entered into the ſaid manors and tenements with the appurtenances, and was poſſeſſed thereof; and the ſaid *E.* being ſo poſſeſſed thereof the ſaid *T.* afterwards (that is to ſay) on the ſaid firſt day of *January* in the ſaid 13th year, with force and arms, that is to ſay, with ſwords, ſtaves, and knives, entered into the ſaid manors and tenements with the appurtenances, which the ſaid *M.* demiſed to the ſaid *E.* in manner aforeſaid, for the term aforeſaid, which is not yet expired, and ejected the ſaid *E.* out of his ſaid farm, and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *E.* ſaith he is injured, and hath damage to the value of 20*l.* And thereof he bringeth this ſuit, *&c.*

T. H.

The notice. I am informed that you are in poſſeſſion, or claim title to the premiſſes in this declaration of ejectment mentioned, or to ſome part thereof; and I being ſued in this action as a caſual ejector, and having no claim nor title to the ſame, do adviſe you to appear on the firſt day of next *Trinity* term in his majeſty's court of Common Bench at *Weſtminſter*,

ſter, by ſome attorney of that court, and then and there by rule of the ſame court to cauſe yourſelf to be made defendant in my ſtead, otherwiſe I ſhall ſuffer judgment therein to be entered againſt me, and you will be turned out of poſſeſſion. I am

Your loving friend,

20 *May* 1740. *T. C.*

Lincoln, *to wit*, *A. B.* late of, *&c.* was attached to anſwer *C. D.* in a plea, wherefore with force and arms he entered into 500 acres of land, *&c.* in the pariſh of *S.* in the county aforeſaid, which *E. F.* demiſed to the ſaid *C.* for a term which is not yet expired; and into 500 other acres, *&c.* in the pariſh of *S.* aforeſaid in the county aforeſaid, which *G. H.* demiſed to the ſaid *C.* for a term which is not yet expired, and ejected him from his ſaid ſeveral farms, and other wrongs to him did, to the great damage of the ſaid *C.* and againſt the peace of our lord the now king, *&c.* And whereupon the ſaid *C.* by *W. R.* his attorney complaineth, that whereas the ſaid *E.* on the day of in the year of the reign of the ſaid lord the king, at in the county aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid firſt above mentioned, with the appurtenances; to have and to hold the ſame tenements firſt above mentioned with the appurtenances, to the ſaid *C.* and his aſſigns, from the feaſt of then laſt paſt, to the full end and term of

Declaration in ejectment on a double demiſe.

1. *Demiſe.*

2 years,

years, from thence following, and fully to be complete and ended. *And whereas alſo* the ſaid *G.* on the ſame day of in the ſaid year of the reign of our ſaid lord the king, at aforeſaid in the county aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid laſt above mentioned with the appurtenances; to have and to hold the ſame tenements laſt above mentioned with the appurtenances to the ſaid *C.* and his aſſigns, from the ſaid day of then laſt paſt, to the full end and term of years from thence next following, and fully to be complete and ended: By virtue of which ſaid ſeveral demiſes the ſaid *C.* entered into the ſeveral tenements aforeſaid, with the appurtenances, and was poſſeſſed thereof; and the ſaid *C.* being ſo poſſeſſed thereof, the ſaid *A.* afterwards, that is to ſay, on the day of in the ſaid year of the reign of our ſaid lord the king, with force and arms, that is to ſay, with ſwords, ſtaves and knives, entered into the ſaid ſeveral tenements above ſpecified, with the appurtenances, reſpectively demiſed to the ſaid *C.* in manner aforeſaid, and upon the poſſeſſion of the ſaid *C.* thereof, and ejected the ſaid *C.* out of his ſaid ſeveral farms (his ſaid ſeveral terms therein not being ended) and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *C.* ſaith, that he is injured and damaged to the value of 10 *l.* And thereof he bringeth ſuit, *&c.*

2. *Demiſe.*

In

In many cases the demise may be laid on a day after that term of which the declaration is, as where a title accrued at *Christmas*, a declaration of *Michaelmas* term is delivered before the essoin-day of *Hilary* term, and the demise is laid to be on the first day of *January*, if the tenant does not appear and defend, the court will give judgment against the casual ejector, and the tenant cannot move in arrest of judgment, as being no party to the suit; neither can a writ of error be brought in the casual ejector's name. If the tenant does appear, all will be right, for a declaration and issue will be made up of *Hilary* term, which will be after the demise.

Demise may be laid on a day after the term the declaration is of.

No judgment shall be entered against the casual ejector without motion first made by a serjeant in court, and oath in writing of notice to the owner or tenant in possession of the lands in question, notwithstanding any former rule. *Pas.* 12 *Car.* 2.

No judgment against casual ejector without motion, and notice to tenant in possession.

The delivery of a declaration in ejectment must be to the tenant himself or his wife, otherwise not good, though it be to the tenant's son, daughter, or apprentice, unless the tenant afterwards acknowledged the receipt thereof; which acknowledgment must be proved to the court by affidavit.

To whom a declaration in ejectment may be delivered.

The tenant in possession, on a *Sunday* acknowledged the receipt of a declaration in ejectment, which, before the essoin day of the term, had been delivered to his daughter, and she acquainted with the contents; held good service.

What shall be good service of a declaration in ejectment.

The

The declaration was tendered to the tenant in poſſeſſion, whereupon it was left upon the floor in his preſence; and he retiring into a parlour, and ſhutting the door, the perſon who ſo tendered and left the declaration, read the ſubſcription aloud, ſo that the tenant might hear it; this was held good ſervice.

The tenant in poſſeſſion ſecreting himſelf in the houſe, ſo that he could not be perſonally ſerved with a declaration in ejectment; a rule was made to ſhew cauſe, why ſervice of it on the ſervant at the houſe, ſhould not be good; the rule to be ſerved on the ſame manner.

On affidavit, that the tenant abſconded to avoid being ſerved; that ſhe came into the poſſeſſion ſurreptitiouſly, and of ſervice of declaration in ejectment on her ſon, who is her ſervant, manages her affairs, and lives in her family; rule to ſhew caſe, why ſuch ſervice on her ſon and ſervant, ſhould not be deemed good ſervice, and leaving a copy of this rule at her houſe good ſervice, made abſolute.

On affidavit, that one of the tenants is a lunatick; that one *C.* lives with, tranſacts her buſineſs, and has the ſole conduct thereof, and of her perſon; but would not permit the deponent to have acceſs to her with the declaration in ejectment; whereupon it was delivered to *C.* Rule that ſhe and *C.* both ſhew cauſe, why this ſervice ſhould not be good; and ſervice of this rule on him be good ſervice thereof.

On

On affidavit, that the tenant in poſſeſſion ſecreted himſelf to prevent his being ſerved with a declaration in ejectment, and could not be ſerved, though frequent endeavours had been uſed; and that the declaration had been delivered to his daughter, who kept his houſe (being a public houſe); and that ſhe was acquainted with the contents of the ſubſcription. A rule was made for the tenant to ſhew cauſe, why ſuch former ſervice ſhould not be deemed good ſervice; the rule to be ſerved on the daughter at the houſe.

Tenant in poſſeſſion to have notice to appear the beginning of the enſuing term.

Upon the delivery of a declaration in ejectment in *London* or *Middleſex*, the tenant in poſſeſſion is to be acquainted, that he is to appear by his attorney here in court in defence of his title, in the beginning of the next term after the delivery of the declaration. And the plaintiff ſhall take nothing by his motion for judgment againſt the caſual ejector for default of appearance, unleſs the motion be made within one week next after the firſt day of every *Michaelmas* term, and every *Eaſter* term, and within four days after the firſt day of every *Hilary* and *Trinity* term. *Trin.* 32 *Car.* 2.

Within what time motion for judgment muſt be made.

This rule does not extend to vacant poſſeſſions.

Declaration muſt be delivered before the eſſoin-day of the term.

The declaration muſt be delivered to the tenant before the eſſoin-day of the term, or the plaintiff cannot have judgment till the term following.

Notice in country ejectments.

In a country ejectment the tenant is to appear and plead within four days excluſive after the next iſſuable term; but if the lands lie

lie in a county where the aſſizes are held but once a year, I apprehend he is not to appear and plead till four days after the term next preceding ſuch aſſizes.

In Lond. *and* Middleſex.

If the lands lie in *London* or *Middleſex*, the notice to appear ſhould be for the firſt day of the next term; if in any other county the notice may be for the beginning of the next term, or for the next term generally.

To move for judgment, you make an affidavit of the ſervice of the declaration in this form:

In the *Common Pleas.*

Richard Roe } In ejectment on the de-
againſt } miſe of *Thomas Bland* and
John Doe, } *Conrade de Golls.*

Affidavit of ſervice of a declaration in ejectment.

L. R. of, *&c.* makes oath, that he this deponent did, on the day of laſt paſt, deliver to Mr. *John Wilkinſon*, the tenant in poſſeſſion of the premiſſes mentioned in the declaration hereunto annexed, or of ſome part thereof, a true copy of the ſaid declaration, and of the notice there under written, and did at the ſame time inform the ſaid *John Wilkinſon*, that unleſs he would appear in this court by ſome attorney thereof on the firſt day of this preſent *Michaelmas* term, and cauſe himſelf by rule of the ſaid court to be made defendant in the room of the caſual ejector *John Doe*, judgment would be entered againſt the ſaid caſual ejector by default, and that he the ſaid *John Wilkinſon* would

would be turned out of poſſeſſion; or words to that or the like effect.

On this affidavit you get a ſerjeant to move for judgment againſt the caſual ejector.

You pay,

	l.	*s.*	*d.*
For the duty and oath of the affidavit	0	2	0
To the ſerjeant to move	0	10	6
Rule duty, and filing the affidavit	0	6	0

Cooke.

Hilary *the ſeventh of king* George *the ſecond.*

Hunt againſt *Jones*, The caſual ejector. } TWelfth day of *February*, upon the affidavit of *Thomas Shewell*, gent. It is ordered, that unleſs *William Collins*, tenant in poſſeſſion of the tenements in queſtion, or any other perſon concerned in the title thereof on *Saturday* next ſhall appear by an attorney of this court, who ſhall then forthwith receive a declaration, and plead thereto the general iſſue, and conſent to the common rule for confeſſing leaſe, entry and ouſter, upon the trial to be had, let judgment againſt the caſual ejector be entered; and in the mean time proceedings are to ſtay, upon the motion of maſter ſerjeant *Baynes*.

Rule for judgment againſt the caſual ejector.

By the court.

Entered. *Townſend.*

Secondary not to receive decl. in ejectment unleſs ſigned by a ſerjeant.

No declaration in ejectment ſhall be taken or received by the ſecondary, unleſs ſigned by ſome ſerjeant at law, and delivered by himſelf to the ſecondary in open court. *Hil.* 2 *Geo.* 2.

Secondary, on requeſt, to ſhew his alphabetical paper of ejectments.

The ſecondary ſhall the morning next after the end of every term, and at all other times when required, ſhew to any perſon who ſhall demand the ſame, his alphabetical paper of ejectments, moved or delivered into court in each term. *Same rule.*

Of ſigning judgment againſt the caſual ejector.

When the rule is out, you ſearch the prothonotary's plea-book, and if no plea is left, you ingroſs the declaration on a double half-crown ſtamped ſheet of paper, to which you affix the rule againſt the caſual ejector, and the prothonotary will ſign judgment, then enter your judgment by *Nil dicit* on the roll, and make out a writ of *Habere facias poſſeſſionem*, for which you pay duty 1 *s.* 6 *d.* Signing 1 *s.* 4 *d.* Sealing 7 *d.*

Of the tenant's appearing.

If the tenant appears, his attorney gets a blank rule from the ſecondary, for which he pays 6 *d.* then fills it up according to the enſuing form, and ſigns his name at the bottom of it, ingroſſes the general iſſue, Not guilty (*poſtea* 310.) in a double peny ſtamped ſheet of paper, and annexes the rule to it, after he enters an appearance for the tenant with the proper filacer, who thereupon ſtamps the rule, and then leaves the plea and rule annexed with the prothonotary.

The

The expence is as follows:

	l.	*s.*	*d.*
Search for motion for judgment against the caſual ejector ——	0	0	6
Blank rule —— ——	0	0	6
Entering appearance —— ——	0	2	0
Entering plea —— ——	0	2	0

Cooke.

Michaelmas *term ſeventh of* George *the ſecond.*

Middleſex, *to wit,* IT is ordered by conſent of *J. D.* attorney for the plaintiff, and *L. R.* attorney for *J. W.* who claims title to the tenements in queſtion, that the ſaid *J. W.* ſhall be admitted defendant; and that the ſaid *J. W.* ſhall immediately appear by his ſaid attorney, who ſhall receive a declaration, and plead thereto the general iſſue this term; and at the trial to be had thereon ſhall appear in his proper perſon, or by his counſel or attorney, and confeſs the leaſe, entry and ouſter of ſo much of the tenements ſpecified in the plaintiff's declaration, as are in the poſſeſſion of the ſaid defendant or his tenants, or any perſons claiming by or under his title; or that in default thereof judgment ſhall be thereupon entered againſt the defendant *John Doe* the caſual ejector; but proceedings ſhall be ſtayed againſt him until default ſhall be made in any of the premiſſes; and by the like conſent it is further ordered, that if by reaſon of any ſuch

The general rule. Roe *againſt* Doe *for* 5 *meſſuages with the appurtenances, in the pariſh of* Stepney *in the county of* Mid. *on the demiſe of* T. Bland *and* Con. de Golls.

default the plaintiff ſhall happen to be non-ſuited upon the trial, the ſaid *J. W.* ſhall take no advantage thereof, but ſhall thereupon pay to the plaintiff coſts to be taxed by the prothonotary. And it is further ordered, that the leſſor of the plaintiff ſhall be liable to the payment of coſts to the ſaid *J. W.* by the court here to be in any manner allowed or adjudged.

By the court.
J. D. for the plt.
L. R. for the deft.

From this rule the plaintiff's attorney gets two rules drawn up by the ſecondary in the ſame manner on ſtamp paper, one for each party; this coſts 7*s.* and then the plaintiff's attorney will make up the iſſue, and deliver a copy of it, and notice of trial to the defendant's attorney; and thereupon proceed to trial, as in other caſes.

Where ſeveral defts. and ſome refuſe to confeſs leaſe, entry, &c.

If there be ſeveral defendants, and at the trial the plaintiff obtains a verdict againſt ſome of the defendants, and the other defendants refuſe to confeſs leaſe, entry and ouſter, the plaintiff may ſign judgment againſt the caſual ejector as to them.

If iſſue not paid for judgment againſt deft. who appeared.

If the defendant's attorney does not pay for the iſſue, the plaintiff's attorney may ſign judgment againſt the defendant, but not againſt the caſual ejector, *ut dicitur*; but ſee the words of the rule by conſent.

A Niſi

A Niſi prius *record in ejectment, with the* poſtea.

Cooke.

Pleas at Weſtminſter *before Sir* Robert Eyre, *knight, and his companions, the lord our king's juſtices of the bench, of the term of* Eaſter *in the ſixth year of the reign of our ſovereign lord* George *the ſecond, by the grace of God of* Great Britain, France *and* Ireland *king, defender of the faith,* &c.

Ro. 579.

Middleſex, *to wit,* *C. L.* late of the pariſh of St. *John the Baptiſt* in the precinct of the *Savoy* in the *Strand* in the county aforeſaid, gent. was attached to anſwer *R. R.* of a plea, wherefore with force and arms, five chambers and one kitchen with the appurtenances, in the precinct of the *Savoy* aforeſaid in the *Strand* in the county aforeſaid, which Sir *P. B.* bart. and *T. B.* eſq; to the aforeſaid *R.* did demiſe for a term which is not yet paſt, he the ſaid *C.* entered, and the ſaid *R.* from his farm aforeſaid ejected, and other enormities to him did, to the great damage of him the ſaid *R.* and againſt his preſent majeſty's peace. And whereupon the ſaid *R.* by *J. S.* his attorney complaineth, that whereas the aforeſaid Sir *P. B.* and *T. B.* the fifth day of *January* in *Declaration.*

the ſixth year of his preſent majeſty's reign, at the pariſh of St. *Clement Danes* in the county aforeſaid, did demiſe unto him the ſaid *R.* the tenements aforeſaid, with the appurtenances; to have and to hold the tenements aforeſaid, with the appurtenances, to the ſaid *R.* and his aſſigns, from the 11th day of *December* then laſt paſt, unto the full end and term of five years from thence next following and fully to be complete and ended: By virtue of which demiſe the ſaid *R.* into the tenements aforeſaid, with the appurtenances, did enter, and was thereof poſſeſſed; and he the ſaid *R.* ſo being thereof poſſeſſed, the aforeſaid *C.* afterwards, *to wit*, the ſame 5th day of *January* in the 6th year aforeſaid, with force and arms, *&c.* into the tenements aforeſaid, with the appurtenances, which the aforeſaid, Sir *P. B.* and *T. B.* to him the ſaid *R.* in form aforeſaid had demiſed for the term aforeſaid which is not yet paſt, did enter, and him the ſaid *R.* from his farm aforeſaid did eject, and other enormities did to the ſaid *R.* to the great damage of the ſaid *R.* and againſt the peace of his preſent majeſty; whereupon he ſaith, that he is damnified, and hath damage to the value of 20*l.* And thereof bringeth ſuit, *&c.*

Plea. And the ſaid *C. L.* by *G. H.* his attorney cometh and defendeth the force and injury by the aforeſaid *R.* againſt him charged, when and where, and in ſuch manner, as this court ſhall award, and ſaith, that he is not guilty of the treſpaſs and ejectment afore-

ſaid,

ſaid, in ſuch manner and form as the ſaid *R. R.* hath againſt him above complained: And of this he putteth himſelf upon his country: And the aforeſaid *R.* doth ſo likewiſe, *&c.* Therefore the ſheriff is commanded to cauſe to come here in five weeks from the feaſt-day of *Eaſter* twelve good and lawful men of the body of his county, every one of whom to have 10*l.* at leaſt by the year in lands, tenements or rents, by whom the truth of the matter may be better known, and who neither are any ways related to the ſaid *R. R.* plaintiff, nor to the ſaid *C. L.* defendant, to recognize whether the ſaid *C. L.* is guilty of the premiſſes, as the ſaid *R.* above complaineth, becauſe as well the ſaid *R.* as the ſaid *C.* between whom the contention thereupon is, have put themſelves upon their country. *Award of the* Venire.

Middleſex, *to wit*, the jury between *R. R.* plaintiff, and *C. L.* late of the pariſh of St. *John Baptiſt* in the precinct of the *Savoy* in the *Strand* in the county aforeſaid, gent. in a plea of treſpaſs and ejectment of the farm, is reſpited here until on the morrow of the holy *Trinity*, unleſs Sir *Robert Eyre*, knight, chief juſtice of our lord the king of the bench here aſſigned, by form of the ſtatute in that caſe made and provided, on *Tueſday* the 8th day of *May* at *Weſtminſter* in the great hall of pleas there, commonly called *Weſtminſter-hall*, in the ſaid county, ſhall firſt come for the default of the jury, becauſe none came, therefore let the ſheriff Jurata.

have the bodies of the ſeveral perſons mentioned in the panel to the writ of *Habeas corpora juratorum* annexed; and be it known, that the juſtices thereupon here in court in the ſame term delivered a writ to the deputy of the ſheriff of the county aforeſaid, to be executed according to due form of law, &c.

Le ſciendum.

Poſtea. Afterwards the day and place within contained, before Sir *Robert Eyre*, knight, chief juſtice within written, having *John Higham*, gent. for his aſſociate, by form of the ſtatute, and ſo forth, cometh the within named *R. R.* by his attorney within contained, and the within written *C. L.* altho' ſolemnly called, cometh not; therefore let the jury, whereof mention is within made, be taken againſt him by default; and the jurors of the ſaid jury being called come, who to ſpeak the truth of the within contained being elected, tried and ſworn, ſay upon their oath, that the ſaid *C.* is guilty of the treſpaſs and ejectment within mentioned, as the ſaid *R. R.* within complaineth againſt him; and they aſſeſs the damages of him the ſaid *R.* on occaſion thereof, over and above the coſts and charges which he has been put to about his ſuit in this behalf, to 1*s.* and for the ſaid coſts and charges to 20*s.* Therefore, &c.

	l.	*s.*	*d.*
Damages	0	1	0
Coſts	1	0	0
Increaſe	15	15	8
In all	16	16	8

Signed 30 *May* 1733.

It

It is not uſual to grant new trials in ejectment, where the verdict is for the defendant, becauſe the plaintiff may bring a new ejectment, and no other diſadvantage happens to him. But where the verdict is for the plaintiff it is otherwiſe, and new trials have been granted; for there the conſequence of not granting a new trial is the alteration of the poſſeſſion of the premiſſes in queſtion. *Of new trials in ejectment.*

Where a verdict in ejectment is for the defendant, or the plaintiff becomes nonſuited upon evidence, a *Ca. ſa.* muſt be made out againſt the plaintiff, and ſhew'd to his leſſor, and the coſts muſt be demanded thereupon of the leſſor. *Of coſts in ejectment.*

Where the plaintiff is nonſuited by reaſon of the defendant's not confeſſing leaſe, entry and ouſter, the coſts are taxed on the rule by conſent, and judgment ſigned againſt the caſual ejector.

If there be no perſon in the houſe, or on the premiſſes, to deliver a declaration in ejectment to, a leaſe of ejectment muſt be ſealed at the houſe, or on the premiſſes and the leſſee left in poſſeſſion, and ſome perſon appointed to enter and eject him; and then an action may be brought againſt ſuch ejector, and the poſſeſſion recovered. *When a leaſe muſt be actually ſealed on the premiſſes.*

Where half a year's rent ſhall be in arrear, the landlord, having a lawful right to re-enter for non-payment, may ſerve a declaration in ejectment without a formal demand or re-entry, or in caſe the ſame cannot be legally ſerved, *affix ſuch declaration on the door of the demiſed meſuage, or ſome notorious* *Where fixing the declaration to the door of the houſe, &c. ſhall be legal ſervice.*

rious place of the lands, which ſhall be deemed a legal ſervice; and on proof that half a year's rent was due before the ſaid declaration was ſerved, and no ſufficient diſtreſs on the premiſſes, the leſſor ſhall recover judgment and execution as fully as in caſe a formal re-entry had been made; and if the leſſee ſhall ſuffer judgment to be recovered on ſuch ejectment and execution, without paying the arrears and coſts, and without filing a bill within ſix months after execution, he ſhall be barred from all relief in law or equity, other than by writ of error, and the leſſor ſhall hold the demiſed premiſſes diſcharged from ſuch leaſe. *Stat.* 4 *Geo.* 2. *c.* 28.

Rent and coſts brought into court, proceedings to ſtay.

But if the tenant before trial will either tender to the leſſor, or bring into court, the rent in arrear, together with all coſts, all further proceedings ſhall ceaſe. *Same ſtat.*

On vacant poſſeſſion may move for judgment any time in the term.

If an ejectment be brought on a vacant poſſeſſion upon this act of parliament, the plaintiff may move for judgment againſt the caſual ejector at any time in the term; the rule of *Trin.* 32 *Car.* 2. *antea fol.* 303. relating only to an ejectment, where the declaration is delivered to the tenant in poſſeſſion.

Tenant ſecreting declaration in ejectment forfeits three years improved rent.

A tenant, to whom a declaration in ejectment ſhall be delivered for any lands, tenements or hereditaments, ſhall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premiſſes ſo holden in poſſeſſion of

ſuch

ſuch tenant, to the perſon of whom he holds. *Stat.* 11 *Geo.* 2. *c.* 19.

The court where ſuch ejectment ſhall be brought may ſuffer the landlord to make himſelf defendant, by joining with the tenant to whom ſuch declaration ſhall be delivered, in caſe he ſhall appear; but in caſe ſuch tenant ſhall refuſe to appear, judgment ſhall be ſigned againſt the caſual ejector for want of ſuch appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which ſuch ejectment was brought, ſhall deſire to appear by himſelf, and conſent to enter into the like rule, that by the courſe of the court the tenant in poſſeſſion, in caſe he had appeared, ought to have done, then the court ſhall permit ſuch landlord ſo to do, and order a ſtay of execution upon ſuch judgment againſt the caſual ejector, until they ſhall make further order therein. *Same ſtatute.* The word landlord means not every perſon claiming title, but a perſon who is in ſome degree of poſſeſſion, as receiving rent, *&c.*

Landlord impowered to make himſelf defendant.

If the plaintiff is nonſuited by default of the landlord's not appearing to confeſs leaſe, entry, *&c.* or obtains a verdict, the court, on producing the *Poſtea*, will make an abſolute rule to take out execution againſt the caſual ejector, and not a rule to ſhew cauſe.

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas *J. M.* lately in our court, before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court, recovered his

Habere facias poſſeſſionem.

	s.	d.
Signing	1	4
Seal	0	7
	1	11

his term yet to come of and in the manor of *S.* with the appurtenances, and 10 meſuages, 500 acres of land, 100 acres of meadow, 300 acres of paſture, with the appurtenances in *S.* in your county, againſt *L. C.* late of, *&c.* which *J. C.* gentleman, on the 1ſt day of *October* in the ——— year of our reign, demiſed to the ſaid *J. M.* to hold and enjoy to the ſaid *J. M.* and his aſſigns, from the feaſt of Saint *Michael* the archangel then laſt paſt, unto the full end and term of ſeven years thence next enſuing, and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *L.* put out and amoved the ſaid *J. M.* from his poſſeſſion, and ejected him from his ſaid farm: Therefore we command you, that you cauſe the ſaid *J. M.* to have his poſſeſſion of his ſaid term yet to come of and in the ſaid manor and tenements aforeſaid, with the appurtenances; and how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* in eight days of the Purification of the bleſſed *Mary*; and have there this writ. Witneſs, *&c.*

if on a double or treble demiſe, you pay 8 d. *for each demiſe after the firſt.*

Habere facias poſſeſſionem, *and a* Fi. fa.

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas *W. D.* gentleman, lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court recovered againſt *S. F.* late of, *&c.* his term yet to come of and in one meſuage and 14 acres of land, with the appurtenances, in *L.* in your county, which *S. J.* and *E. J.* on the 1ſt day of *October* in the year of our lord

lord ——, at *L.* aforeſaid, demiſed to the ſaid *W.* to hold and enjoy the ſaid tenements with the appurtenances, to him and his aſſigns, from the ——— day of ——— then laſt paſt, unto the end and term of three years thence next enſuing, and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *S.* put out and amoved the ſaid *W.* from his poſſeſſion, and ejected him from his ſaid farm, therefore we command you, that without delay you cauſe the ſaid *W.* to have his poſſeſſion of his term aforeſaid of and in the ſaid meſſuage and tenements, with the appurtenances; and how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* in eight days of the purification of the bleſſed *Mary*. We alſo command you, that of the goods and chattels of the ſaid *S.* in your bailiwic, you cauſe to be made eleven pounds, which were adjudged to the ſaid *W.* in our ſaid court for his damages, which he had by reaſon of the treſpaſs and ejectment aforeſaid, and have that money before our juſtices at *Weſtminſter* at the ſaid time, to render to the ſaid *W.* for his damages aforeſaid, whereof the ſaid *S.* is convicted; and have there this writ. Witneſs, *&c.*

Habere facias poſſeſſionem *for executor after a* Sci. fa'.

GEORGE the ſecond, *&c.* To, *&c.* greeting. Whereas *A. G.* lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court recovered his term of and in one meſuage, 28 acres of land, five acres of meadow, and 17 acres of paſture,

ture, with the appurtenances, in *C.* in your county, againſt *D. B.* late of, *&c.* merchant, which *W. N.* on the 1ſt day of *April* in the ——— year of our reign, at *C.* aforeſaid, demiſed to the ſaid *A.* to hold and enjoy to him and his aſſigns from the feaſt of the annunciation of the bleſſed virgin *Mary* then laſt paſt, unto the end and term of three years thence next enſuing and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *D.* put out and amoved the ſaid *A.* from his poſſeſſion, and ejected him from his ſaid farm therein, which ſaid *A.* after the ſaid judgment was given, died, after whoſe death it is conſidered in our ſaid court, that *C. W.* and *R. S.* executors of the teſtament and laſt will of the ſaid *A.* have execution againſt the ſaid *D.* of the term aforeſaid yet to come of and in the ſaid tenements with the appurtenances, by the default of the ſaid *D.* We therefore command you, that without delay you cauſe the ſaid *C.* and *R.* to have poſſeſſion of the ſaid term yet to come of and in the ſaid tenements, with the appurtenances: And how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* from the day of the holy *Trinity* in three weeks; and have there this writ. Witneſs, *&c.*

Sci. fa.

Of writs of Scire facias.

A *Scire facias* is a judicial writ, and properly lies where one has recovered debt or damages, and has not ſued out execution within the year and a day. It alſo lies on a recognizance of bail; and in many other caſes it is called a *Scire facias*, becauſe of the words of the writ to the ſheriff, *viz. Quod Scire facias præfat. D.* the defendant, *quod ſit coram, &c. oſtenſurus ſi quid pro ſe habeat aut dicere ſciat quare, &c.* ſo as by this writ it appears that the defendant is to be warned to plead any matter in bar of execution; and therefore although it be a judicial writ, yet becauſe the defendant may plead thereto, this *Scire facias* in law is accounted in nature of an action.

Sci. fa'. *after a year and a day.*

GEORGE the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. Whereas *J.* R. lately in our court, *to wit*, in the term of St. *Hilary* in the 12th year of our reign, before Sir *John Willes*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court recovered againſt *H. N.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of 40 *l.* as 63 *s.* which were adjudged to the ſaid *J. R.* in our ſame court for his damages which he had by occaſion of the detaining

	s.	*d.*
Duty -	1	0
Signing -	1	4
Seal —		7

that debt, whereof the ſaid *H.* is convicted, as by the record and proceedings thereof remaining in our ſame court before our juſtices at *Weſtminſter* manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, as on the information of the ſaid *J. J.* we have been given to underſtand; and becauſe we are willing that thoſe things which in our ſame court are rightly acted be demanded by a due execution, we command you, that by good and lawful men of your bailiwick, you make known to the ſaid *H.* that he be before our juſtices at *Weſtminſter*, on [*the return*] to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *J.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the ſaid recovery, if it ſhall ſeem expedient to him; and have there the names of them, by whom you ſhall make known to him, and this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the———day of, *&c.* Cooke.

Note; If the plaintiff has within the year and day ſued out an execution, got it returned and filed, and continued it on the roll by *Vic' non miſit breve*, it is ſufficient to warrant an execution after the year and a day.

In this caſe one *Scire facias*, with a *Nihil* returned, is ſufficient.

This writ is to be ſigned by the prothonotary, in whoſe office the proceedings were; then it is to be delivered to the ſheriff, and when returned, it muſt be entered on the protho-

prothonotary's remembrance, and a rule must be given; after the rule is out, you sign and docket the judgment, and enter it up in manner following:

Entry *of judgment on a* Scire facias.

Middlesex, *to wit*, the sheriff was commanded, whereas *J. R.* lately in the court of our lord the now king, *to wit*, in the term of St. *Hilary* in the twelfth year of the reign of our said lord the king, before Sir *John Willes*, knight, and his companions, then justices of our said lord the king of the bench here, *to wit*, at *Westminster*, by the consideration of the same court, recovered against *H. N.* late of, *&c.* otherwise called, *&c.* as well a certain debt of 40 *l.* as 63 *s.* which were adjudged to the said *J.* in the same court for his damages which he had by occasion of the detaining that debt whereof the said *H.* is convicted, as by the record and proceedings thereof remaining in the same court of our said lord the now king here, *to wit*, at *Westminster* aforesaid, manifestly appeareth; *Yet* execution of the said judgment still remaineth to be made, as on the information of the said *J.* the king hath been given to understand; and because, *&c.* That by good, *&c.* he make known to the said *H.* that he be here at *Westminster* at this day, *to wit*, [*the return*] to shew if any thing, *&c.* why the said *J.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, *&c.* And now here at this day came the said *J.* by *L. R.* his attorney,

and offered himſelf on the fourth day againſt the ſaid *H.* in the plea aforeſaid, and he being ſolemnly demanded came not; and the ſheriff now ſendeth, that he hath nothing, *&c.* nor is he found, *&c.* It is therefore conſidered that the ſaid *J.* have execution againſt the ſaid *H.* for the debt and damages aforeſaid, by the default of the ſaid *H. &c.*

	s.	*d.*
Duty	1	6
Signing writ	1	4
Seal	0	7
Return	1	0
Rule and duty	1	6
Signing judgment	2	0
Filing warrant	0	4
	8	3

Scire facias *in debt for an adminiſtrator.*

GEORGE the ſecond, *&c.* To, *&c.* Whereas *H. S.* lately in our court, *to wit*, in the term of St. *Hilary* in the 13th year of our reign, before Sir *John Willes*, knt. and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *N. C.* late of *&c.* otherwiſe called, *&c.* as well a certain debt of 200 *l.* as 63 *s.* which in our ſaid court were adjudged to the ſaid *H.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *N.* is convicted, as by the record and proceedings thereof remaining in our ſaid court manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *H.* is dead,

dead, as on the information of *W. S.* widow, adminiſtratrix of all the goods and chattels which were of the ſaid *H.* at the time of his death, we have been given to underſtand; and becauſe we are willing that thoſe things which in our ſaid court have been rightly acted ſhould be demanded by a due execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *N.* that he be before our juſtices at *Weſtminſter* on [*the return*] to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *W.* ought not to have execution againſt him, *&c. ut antea, fol.* 320.

Entry of a Scire facias *in debt by an executor.*

—— *to wit*, the ſheriff was commanded, [*ut antea, fol.* 321.] yet execution ſtill remaineth to be made, and the ſaid *W.* is dead, as on the information of *R. W.* executor of the teſtament of the ſaid *W.* the king hath been informed; and becauſe, *&c.* by good, *&c.* make known to the ſaid *B.* [*ut antea, fol.* 321, 322.] And now here at this day came the ſaid *R.* by *J. S.* his attorney, and offered himſelf on the 4th day againſt the ſaid *B.* in the plea aforeſaid, and the ſaid *B.* being ſolemnly demanded came not; and the Nihil *return'd.* ſheriff now returneth, that he hath nothing, *&c.* nor is he found, *&c.* And upon this *Profert.* the ſaid *R.* bringeth here into court the letters teſtamentary of the ſaid *W.* by which it ſufficiently appeareth to the court here, that the ſaid *R.* is executor of the teſtament of the ſaid *W.* and thereof hath the adminiſtration, *&c.* and he prayeth execution againſt

the ſaid *B.* of the debt and damages aforeſaid in form aforeſaid to be adjudged to him, *&c.*

Judgment. It is therefore conſidered that the ſaid *R.* have execution againſt the ſaid *B.* of the debt and damages aforeſaid, by the default of the ſaid *B. &c.*

Entry of a Sci-re facias *in caſe againſt an adminiſtrator.*

—— *to wit*, the ſheriff was commanded, whereas *R. G.* lately in the court of our lord the king here, *to wit*, in the term of St. *Hilary* in the firſt year of his reign, before Sir *Robert Eyre*, knt. and his companions, then juſtices of our lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *P. G.* late of *Southwark* in the county of *Surrey*, dyer, 18 *l.* which to the ſaid *R.* in the ſame court of our lord the king now here were adjudged for his damages, which he had by occaſion of the not performing certain promiſes and undertakings made by the ſaid *P.* in his life-time to the ſaid *R.* whereof the ſaid *P.* was convicted, as by the record and proceedings thereof remaining in the ſame court of our lord the king now here, *to wit*, at *Weſtminſter* aforeſaid, manifeſtly appeareth. *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *P.* is dead, as on the information of the ſaid *R.* the king hath been informed; and becauſe, *&c.* that by good, *&c.* he ſhould make known to *A. G.* widow, adminiſtratrix of the goods and chattels which were of the ſaid *P.* who died inteſtate, *&c.* that ſhe be here at this day, *to wit*, on the morrow of *All Souls*, to ſhew

if any thing, *&c.* why the ſaid *R.* ought not to have execution againſt her of the damages aforeſaid, of the goods and chattels which were of the ſaid *P.* at the time of his death, being in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much in her hands, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *R.* by *L. R.* his attorney, and offered himſelf on the 4th day againſt the ſaid *A.* in the plea aforeſaid, and ſhe being ſolemnly demanded came not; and the ſheriff now *Return* Nihil. returneth that ſhe hath nothing, *&c.* nor is ſhe found, *&c.* Therefore, *as before*, the Alias ſci. fa. ſheriff was commanded, that by good, *&c.* he ſhould make known to the ſaid *A.* that he ſhould be here at this day, *to wit*, on the [*the return*] to ſhew in form aforeſaid; at which day came the ſaid *R.* by his ſaid attorney; and hereupon the ſaid *A.* on the 4th day of the plea being ſolemnly demanded came not; and the ſheriff, *as before*, re- *Return* Nihil. turneth that ſhe hath nothing, *&c.* nor is ſhe found, *&c.* and upon this the ſaid *R.* ſaith, that after the judgment aforeſaid rendered the ſaid *P.* died inteſtate, and that adminiſtration of the goods and chattels which were of the ſaid *P.* at the time of his death, after the death of the ſaid *P.* was committed to the ſaid *A.* at *Southwark* aforeſaid; and the ſaid *R.* prayeth execution againſt the ſaid *A.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *P.* at the time of his death, being in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much

Judgment. much thereof in her hands. It is therefore conſidered that the ſaid *R.* have execution againſt the ſaid *A.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *P.* at the time of his death in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much thereof in her hands, *&c.* by the default of the ſaid *A. &c.*

Entry of a Scire facias *in debt againſt executors, and two* Nihils *returned.* London, *to wit*, the ſheriffs were commanded, whereas *R. F.* [*as before, to*] *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *T.* is dead, as on the information of the ſaid *R.* the king has been informed; and becauſe, *&c.* that by good, *&c.* they make known to *A. J.* widow, and *M. J.* executors of the teſtament of the ſaid *T.* that they be here at this day, *to wit*, from the day of *Eaſter* in 15 days, to ſhew if any thing, *&c.* why the ſaid *R.* ought not to have execution againſt them of the debt and damages aforeſaid, of the goods and chattels of the ſaid *T. J.* at the time of his death, in their hands to be adminiſtered, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *R.* by *W. E.* his attorney; and the ſaid *A.* and *M.* on the fourth day of the plea being ſolemnly demanded came not; and the ſheriffs now return, that the ſaid *A.* and *M.* have nothing, *&c.* nor are they found, *&c.* Therefore, *as before*, the ſheriffs are commanded, that by good, *&c.* they make known to the ſaid *A.* and *M.* that they be here from the day of *Eaſter* in five weeks to

ſhew

ſhew in form aforeſaid; at which day here came as well the ſaid *R.* by his attorney aforeſaid, as the ſaid *A.* and *M.* by *F. K.* their attorney; and the ſheriffs now return that they have nothing, *&c.* nor are they found, *&c. ut antea.*

Where one Sci. fa. *return'd* Nihil *is ſufficient.*

In caſe of the death of either party judgment muſt be revived by *Scire facias.* In caſe of the death of the defendant you muſt have a *Scire feci* or two *Nihils* return'd; but in caſe of the plaintiff's death one *Nihil* is ſufficient.

Where if plaintiff or defendant dies after interlocutory, and before final judgment, proceedings may be revived by Scire facias.

In all actions in this court, if any plaintiff ſhall happen to die after any interlocutory judgment, and before final judgment, the action ſhall not abate if ſuch action might be originally maintained by the executors or adminiſtrators of ſuch plaintiff; and if the defendant die after interlocutory judgment, and before final judgment, the action ſhall not abate, if ſuch action might be originally proſecuted againſt the executors or adminiſtrators of ſuch defendant; and the plaintiff, or his executors or adminiſtrators ſhall have a *Scire facias* againſt the defendant, his executors or his adminiſtrators, to ſhew cauſe why damages in ſuch action ſhould not be aſſeſſed and recovered; and if ſuch defendant, *&c.* ſhall appear at the return of ſuch writ, and not alledge matter ſufficient to arreſt the final judgment, or (being returned warned, or upon two writs of *Scire facias* it be returned, that the defendant, *&c.* had nothing, *&c.*) ſhall make default, a writ of in-

quiry ſhall be awarded, which being executed and returned, final judgment ſhall be given. *Stat.* 8 & 9 *W.* 3. *c.* 9. §. 6, 15.

A Scire facias *where the plaintiff died after interlocutory judgment, and before final judgment.*

GEORGE the ſecond, &c. To the ſheriffs of *London*, greeting. Whereas *G. K.* in his life-time, lately in our court, *to wit*, in the term of *Eaſter* in the 10th year of our reign, before Sir *John Willes*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, by our writ had impleaded *M. G.* late of *London*, widow, declaring in the ſame plea againſt her, that

Recital of the interlocutory judgment.

whereas the ſaid *M.* [*ſetting forth the whole declaration to*] and thereof he brought ſuit, &c. And it was proceeded in our ſame court in ſuch manner, that in the term of the holy *Trinity* in the 10th and 11th years of our reign, by the ſame court it was conſidered, that the aforeſaid *G.* ought to have recovered his damages againſt the ſaid *M.* occaſioned by not performing the promiſes and undertakings aforeſaid. But becauſe it was not known what damages the ſaid *G.* had ſuſtained on occaſion of not performing the promiſes and undertakings aforeſaid;

And award of inquiry.

therefore the ſheriffs of *London* were commanded, that by the oath of good and lawful men of their bailiwic they ſhould diligently inquire, what damages the ſaid *G.* had ſuſtained, as well on occaſion of the not performing the promiſes and undertakings aforeſaid, as for his coſts and charges by him about his ſuit in that behalf laid out; and the inquiry which the ſheriffs ſhould

thereof

thereof make, they ſhould make manifeſt to our juſtices at *Weſtminſter* aforeſaid, from the day of St. *Michael* in three weeks then next following, under the ſeal, *&c.* and the ſeals, *&c.* as by the record and proceſs thereof remaining in our ſame court, *to wit*, at *Weſtminſter* aforeſaid, may plainly appear. The inquiry nevertheleſs of the damages aforeſaid yet remaineth to be made; and the aforeſaid *G.* at *London* aforeſaid made his teſtament and laſt will in writing, and thereby conſtituted and appointed *E. K.* his wife ſole executrix thereof; and afterwards, and after the judgment aforeſaid given at *London* aforeſaid died, after whoſe death the ſaid *G.* proved the ſaid teſtament in due form of law, and took the burthen of the execution of that teſtament upon her, as by the letters teſtamentary thereof here in court by the ſaid *E.* produced to our juſtices ſufficiently appeareth; and becauſe we will thoſe things which in our ſame court are rightly acted be duly carried into execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *M.* that ſhe be before our juſtices at *Weſtminſter* on the morrow of St. *Martin*, to ſhew if ſhe hath, or knoweth any thing to ſay for herſelf, why the damages aforeſaid by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, ſhould not be aſſeſſed and adjudged to the ſaid *E.* according to the form of the ſtatute in this caſe lately made and provided, if to her it ſhall ſeem

Death of plaintiff, executrix proves his will.

Profert.

Sic. &c.

ſeem expedient; and have you there the names of them by whom you ſhall make it known to her, and this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the 20th day of *October* in the 11th year of our reign.

If a *Nihil* be returned, according to the above ſtatute, an *Alias ſcire facias* muſt iſſue; you muſt enter them *verbatim* in the prothonotary's remembrance roll, and give a rule.

Entry of the above Scire facias.

Firſt Scire facias *roll.*

London, *to wit*, The ſheriffs were commanded, whereas *G. K.* lately in the court of our lord the now king, *to wit*, in *Eaſter* term the 10th year of the reign of our ſaid lord the king, before Sir *John Willes*, knight, and his companions, then juſtices of our ſaid lord the king of the bench here, *to wit*, at *Weſtminſter*, by the writ of our ſaid lord the king, had impleaded *M. G.* late of *London*, widow, declaring in the ſame plea againſt her, that whereas [*ſetting forth the whole declaration, as in the* Sci. fa.] And it was proceeded in the ſame court of our ſaid lord the king in ſuch manner, that in the term of the holy *Trinity* in the 10th and 11th years of the reign of our ſaid lord the king, by the ſame court it was conſidered, that the aforeſaid *G.* ought to have recovered his damages againſt the ſaid *M.* occaſioned by not performing the promiſes and undertakings aforeſaid: But becauſe it was not known what damages the ſaid *G.* had ſuſtained on occaſion of not performing the ſaid promiſes and

undertakings, therefore the then ſheriffs were commanded, that by the oath of good and lawful men of their bailiwic they ſhould diligently inquire what damages the ſaid *G.* had ſuſtained, as well on occaſion of the not performing the promiſes and undertakings aforeſaid, as for his coſts and charges by him about his ſuit in that behalf laid out; and the inquiry which the ſheriffs ſhould thereof make, they ſhould make manifeſt to the juſtices of our ſaid lord the king, *to wit*, at *Weſtminſter* aforeſaid, from the day of Saint *Michael* in three weeks then next following, under the ſeal, *&c.* and the ſeals, *&c.* as by the record, and proceſs thereof in the ſame court of our ſaid lord the king here, *to wit*, at *Weſtminſter* aforeſaid remaining, may plainly appear. The inquiry nevertheleſs of the damages aforeſaid yet remaineth to be made, and the ſaid *G.* at *London* aforeſaid made his teſtament and laſt will, and thereby conſtituted and appointed *E. K.* his wife ſole executrix thereof; and afterwards, and after the judgment aforeſaid given at *London* aforeſaid, died, after whoſe death the ſaid *E.* proved the ſaid teſtament in due form of law, and took the burden of the execution of that teſtament upon her, as by the letters teſtamentary thereof here, *to wit*, at *Weſtminſter* aforeſaid, by the ſaid *E.* produced to the ſaid juſtices of our ſaid lord the king ſufficiently appeareth. And becauſe, *&c.* that by good, *&c.* the ſaid ſheriffs ſhould make known to the ſaid *M.* that ſhe ſhould be here at this day, *to wit*, on the morrow of St.

St. *Martin*, to ſhew if any thing, &c. why the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, ſhould not be aſſeſſed and adjudged to the ſaid *E.* according to the form of the ſtatute in this caſe lately made and provided, if, &c. And now here at this day, *to wit*, on the morrow of St. *Martin* aforeſaid, cometh the aforeſaid *E.* by *W. T.* her attorney, and hath offered herſelf the fourth day againſt the ſaid *M.* in the plea aforeſaid; and the ſaid *M.* being ſolemnly called cometh not; and the now ſheriffs do return, that ſhe hath nothing, &c. nor is to be found, &c. Therefore, as before, the ſheriffs are commanded, that by good, &c. they make known to the ſaid *M.* that ſhe be here in eight days of St. *Hilary*, to ſhew in manner aforeſaid.

Return Nihil.

Second Scire facias *roll.*

London, *to wit*, Heretofore, as it appeareth in this ſame term, in the roll it is thus contained, *to wit*, London, *to wit*, The ſheriffs were commanded [*the laſt entry* verbatim, *and then go on*] At which day here cometh the ſaid *E.* by *W. T.* her ſaid attorney, and hath offered herſelf the fourth day againſt the ſaid *M.* in the plea aforeſaid; and the ſaid *M.* being ſolemnly called cometh not; and the ſheriffs, as before, do return, that ſhe hath nothing, &c. nor is to be found, &c. And hereupon the ſaid *E.* prayeth, that the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing

Return Nihil.

forming the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, may be aſſeſſed and adjudged unto her: Therefore it is conſidered, that the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid ſuſtained, be aſſeſſed and adjudged unto the ſaid *E.* according to the form of the ſtatute in that caſe made and provided, by default; and becauſe it is ſtill unknown what damages the ſaid *G.* hath ſuſtained by reaſon of the premiſſes aforeſaid; therefore, as before, the ſheriffs are commanded, that by the oath of good and lawful men of their bailiwic, they diligently inquire what damages the ſaid *G.* hath ſuſtained, as well by reaſon of the ſaid premiſſes, as for his coſts and charges by him laid out about his ſuit in that behalf; and the inquiſition which they ſhall thereupon make, that they make manifeſt to the juſtices of the lord the king here, *to wit*, at *Weſtminſter* aforeſaid, in eight days of the purification of the bleſſed *Mary*, under the ſeal, *&c.* and the ſeals, *&c.* At which day here cometh the ſaid *E.* by her ſaid attorney, and the ſheriffs, *to wit*, Sir *George Champion*, knight, and *Robert Cater*, eſq; now return here a certain inquiſition taken before them at *Guildhall* in the pariſh of St. *Lawrence Jewry* in the ward of *Cheap* of the ſame city, on the 4th day of *February* laſt paſt, by the oath of 12, *&c.* by which it is found, that the ſaid *G.* by reaſon of the premiſſes ſuſtained damages, beſides his coſts laid out by him about his ſuit in that behalf,

Judgment that damages be aſſeſſed.

Inquiry awarded.

Return of inquiry.

to

to 105*l.* and for his coſts and charges aforeſaid to 27*s.* 4*d.* Therefore it is conſidered, that the ſaid *E.* as executrix aforeſaid, do recover againſt the ſaid *M.* the ſaid damages to 106*l.* 7*s.* 4*d.* found by the ſaid inquiſition in manner aforeſaid; and alſo 11*l.* 2*s.* 8*d.* adjudged by the court here to the ſaid *E.* at her requeſt, for the increaſe of the coſts and charges aforeſaid; which ſaid damages amount in the whole to 117*l.* 10*s.* And the ſaid *M.* in mercy, *&c.* —— *H.* 11 *G.* 2. *Ro.* 341.

Judgment ſigned 17 April 1737.

Mercy.

Entry of Scire facias *againſt bail.*

Note; the firſt writ is made out by the filacer. The ſecond Sci. fa. *is ſigned by the prothonotary.*

Middleſex, *to wit*, The ſheriff was commanded, whereas *J. H.* of, *&c.* and *S. A.* of, *&c.* lately, that is to ſay, in *Michaelmas* term in the 12th year of the reign of our ſovereign lord the now king before Sir *John Willes*, knight, and his companions, then our ſaid lord the king's juſtices of the bench at *Weſtminſter*, came in their proper perſons, and acknowledged, and each of them by himſelf acknowledged, to owe to *H. D.* the ſum of 110*l.* which ſaid ſum of 110*l.* they the ſaid *J.* and *S.* for themſelves and their heirs willed and granted, and each of them for himſelf and his heirs, willed and granted to be made of their and each of their lands and chattels, and to be levied to the uſe and behoof of the ſaid *H.* And whereas *J. H.* of, *&c.* lately, that is to ſay, in the ſame *Michaelmas* term in the 12th year aforeſaid, in the ſaid court of our ſaid lord the king, before Sir *John Willes*, knight, and his companions, then our ſaid lord the king's juſtices

of

of the bench at *Weſtminſter*, came in his proper perſon, and acknowledged himſelf to owe to the ſaid *H. D.* the ſum of 220*l.* which ſaid ſum of 220*l.* the ſaid *J. H.* for himſelf and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the uſe and behoof of the ſaid *H.* under this condition, that if judgment ſhould happen to be given for the ſaid *H.* againſt the ſaid *J. H.* in the ſame court, in a certain plea of debt upon demand for 124*l.* proſecuted in the ſame court by the ſaid *H.* againſt the ſaid *J. H.* that then the ſaid *J. H.* would ſatisfy the ſaid *H.* his ſaid debt and damages on occaſion of detaining the ſaid debt to be adjudged to the ſaid *H.* againſt the ſaid *J. H.* in the ſame court in the plea aforeſaid, or render his body on that occaſion to the priſon of our ſaid lord the king of the *Fleet*; and although the ſaid *H.* afterwards, that is to ſay, in the ſame *Michaelmas* term in the ſaid 12th year of the reign of our ſaid lord the king, in the ſame court, before the ſaid Sir *John Willes*, knight, and his companions, then our ſaid lord the king's juſtices of the bench aforeſaid, by the judgment and conſideration of the ſame court, recovered againſt the ſaid *J. H.* as well his ſaid debt of 124*l.* as 16*l.* 10*s.* which were adjudged to the ſaid *H.* in the ſame court for his damages, which he had on occaſion of detaining that debt, whereof the ſaid *J. H.* is convicted, as by the record and proceedings thereof now remaining in the ſame court at *Weſtminſter* aforeſaid is manifeſtly

nifeſtly apparent. Nevertheleſs the ſaid *J. H.* hath not yet ſatisfied the ſaid *H.* for his debt and damages aforeſaid, nor rendered his body on that occaſion to the ſaid priſon of the *Fleet*, according to the form of the ſaid recognizance, as our ſaid lord the king has received information from the ſaid *H.* And becauſe, *&c.* that by good, *&c.* he ſhould make known to the ſaid *J. H. J. H.* and *S.* that they be here at this day, that is to ſay, on the morrow of the holy *Trinity*, to ſhew if any thing, *&c.* that is to ſay, the ſaid *J. H.* why the ſaid 110*l.* by him in form acknowledged ſhould not be made of his lands and chattels; and the ſaid *S.* why the ſaid 110*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels; and the ſaid *J. H.* why the ſaid 220*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels, and levied to the uſe and behoof of the ſaid *H.* according to the form of the ſaid recognizance, if, *&c.* And now at this day the ſaid *H.* cometh here by *L. R.* his attorney, and offered himſelf on the fourth day againſt the ſaid *J. H. S. J. H.* in the plea aforeſaid; and they, though ſolemnly called, came not; and the ſheriff now returneth, that the ſaid *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, *&c.* nor are they, nor is any of them found, *&c.* Therefore, as before, the ſheriff was commanded, that by good, *&c.* he ſhould make known to the ſaid *J. H. S.* and *J. H.* that they be here from the day of the holy *Trinity*

Return Nihil.

Alias *awarded.*

nity in three weeks, to ſhew in form aforeſaid; at which day the ſaid *H.* cometh here by his attorney aforeſaid, and offered himſelf on the fourth day againſt the ſaid *J. H. S.* and *J. H.* in the plea aforeſaid, and they, though ſolemnly called, come not; and the ſheriff, as before, now returneth, that the ſaid *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, *&c.* nor are they, nor is any one of them found, *&c.* And thereupon the ſaid *H.* prayeth execution againſt the ſaid *J. H. S.* and *J. H. to wit,* againſt the ſaid *J. H.* of the ſaid 110*l.* by him in form aforeſaid acknowledged, and againſt the ſaid *S.* of the ſaid 110*l.* by him in form aforeſaid acknowledged, and againſt the ſaid *J. H.* of the ſaid 220*l.* by him in form aforeſaid acknowledged, according to the form of the recognizance, to be adjudged to him, *&c.* Therefore it is conſidered, *Judgment.* that the ſaid *H.* have execution againſt the ſaid *J. H. S.* and *J. H.* that is to ſay, againſt the ſaid *J. H.* of the ſaid 110*l.* by him in form aforeſaid acknowledged; and againſt the ſaid *S.* of the ſaid 110*l.* by him in form aforeſaid acknowledged; and againſt the ſaid *J. H.* of the ſaid 220*l.* by him in form aforeſaid acknowledged, by default, *&c.*

GEORGE, &c. To the ſheriff of *Middleſex*, greeting. Whereas *S. N.* of the city of *Coventry* in the county of the ſame city, cordwainer, and *J. S.* of the ſame city in the county of the ſame city, farrier, here-ofore, *to wit,* on the fourth day of *May* in the ——— year, *&c.* before *S. W.* eſq; one of Sci. fa. *againſt bail on a* Habeas corpus *upon a recognizance taken before a commiſſioner, defendant in perſon.*

of the commiſſioners by our juſtices at *Weſt-*
Stat. 4 W. & M. c. 4. *minſter* appointed, according to the form of the ſtatute in this caſe lately made and provided, became bail, and each of them became bail for *J. F.* in the ſum of 50*l.* And whereas the ſaid *J. F.* on the ſame 4th day of *May* in the ——— year of, *&c.* aforeſaid, before the ſame commiſſioner acknowledged, that he owed to *B. C.* the ſum of 100*l.* Which ſaid ſum of 50*l.* the ſaid *S.* and *J.* acknowledged, and each of them acknowledged to be made of their, and each of their lands and chattels; and which ſaid ſum of 100*l.* the ſaid *J. S.* acknowledged to be made of his lands and chattels, and levied to the uſe and behoof of the ſaid *B.* upon this condition, that the ſaid *J. F.* ſhould appear in our court before our juſtices at *Weſtminſter*, at the ſuit of the ſaid *B.* in a certain plea of treſpaſs and aſſault to the damage of 50*l.* And if in our ſame court judgment ſhould happen to be given in the ſame plea for the ſaid *B.* againſt the ſaid *J. F.* then the ſaid *J. F.* ſhould ſatisfy all the damages which ſhould be adjudged to the ſaid *B.* in our ſame court in the plea aforeſaid, or render his body on that occaſion to the priſon of the *Fleet*, as by the record and proceedings thereof remaining in our ſame court manifeſtly appeareth. And although the ſaid *B.* in the term of *Eaſter* in the ——— year of, *&c.* before Sir ———, knt. and his companions, our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court recovered againſt the ſaid *J. F.* 19*l.* which

which in our ſame court were adjudged to the ſaid *B.* for his damages which he had by occaſion of the ſaid treſpaſs and aſſault whereof the ſaid *J. F.* is convicted, as by the record and proceedings thereof in our ſame court alſo remaining manifeſtly appeareth; *Yet* the ſaid *J. F.* hath not ſatisfied the ſaid damages to the ſaid *B.* nor rendered his body on that occaſion to the ſaid priſon of the *Fleet*, according to the form of the ſaid recognizance, as from the information of the ſaid *B.* we have been given to underſtand. And becauſe we will that thoſe things which in our ſaid court are rightly acted and acknowledged, be brought to a due execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *S. J. S.* and *J. F.* that they be before our juſtices at *Weſtminſter* on [*the return*] to ſhew if any thing they have, or know to ſay for themſelves, *to wit*, to the ſaid *S.* why the ſaid 50*l.* by him in form aforeſaid acknowledged ought not to be made of his lands and chattels; to the ſaid *J. S.* why the ſaid 50*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels; and to the ſaid *J. T.* why the ſaid 100*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels, and be levied to the uſe and behoof of the ſaid *B.* according to the form of the ſaid recognizance, if it ſhall ſeem expedient to him; and have there the names of them by whom you ſhall make known to them, and this writ. Witneſs, *&c.*

Intrat. Scire fieri & inquir'.

Award of Fi. fa. *in debt for executors againſt an executrix.*

Cambridge, *to wit*, the ſheriff was commanded, that of the goods and chattels which were of *Henry Cromwell*, eſq; deceaſed, lately called *Henry Cromwell* of *Wicken* in the county of *Cambridge*, eſq; in the hands of *Elizabeth Cromwell* late of *Spunny* in the county aforeſaid, widow, executrix of the teſtament of the ſaid *Henry* to be adminiſtered, being in his bailiwick, he ſhould cauſe to be made as well a certain debt of 200*l.* which *Chriſtopher Wynne*, eſq; and *Sarah* his wife, *Thomas Percival*, gentleman, and *Mary* his wife, and *Thomas Balls*, gentleman, which ſaid *Sarah*, *Mary*, and *Thomas Balls*, were executors of the teſtament of *George Balls*, gentleman, deceaſed, in the court of our lord *Charles* the ſecond, late king of *England*, before the juſtices of the ſaid late king at *Weſtminſter*, recovered againſt the ſaid *Elizabeth*, as 40*l.* which in the ſame court of the ſaid late king were adjudged to the ſame *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for their damages which they had by occaſion of the detaining that debt, to be levied of the ſame goods and chattels, if the ſaid *Elizabeth* had ſo much thereof in her hands to be adminiſtered; and if ſhe had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *Elizabeth*; and that he ſhould have that money here from the day of the holy *Trinity* in three weeks, to render to the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the debt and damages aforeſaid, whereof the ſaid *Elizabeth* is convicted. And now here at this day came

De bonis teſtatoris ſi, &c.

Si non, &c. Damna de bonis propriis.

came the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, by *Richard Puplet* their attorney; and the ſheriff now return- *Return.*
eth, that he, by virtue of the ſaid writ to him directed, had cauſed the ſaid 40*s.* being *Damages levied* de bonis
the damages aforeſaid, to be made of the propriis.
proper goods and chattels of the ſaid *Elizabeth*, which ſaid 40*s.* he hath here at this day to render to the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the damages aforeſaid; and the ſaid ſheriff fur-
ther returneth to the juſtices here, that there *Nulla bona*
are no goods or chattels in his bailiwic which *teſtatoris.*
were of the ſaid *Henry*, in the hands of the ſaid *Elizabeth* to be adminiſtered, whereof he could cauſe to be made the ſaid debt and damages, or any part thereof; and becauſe the ſaid return is conceived to be made in delay of the execution of the ſaid judgment as to the debt aforeſaid; and it is teſtified in *Devaſtavit*
the ſame court of the king here, on the be- *ſuggeſted.*
half of the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, that the ſaid *Elizabeth* hath ſold, eloined, waſted, converted and diſpoſed to her own proper uſe diers goods and chattels which were of the ſaid *Henry* at the time of his death, and have come to the hands of the ſaid *Elizabeth* to be adminiſtered, to the value of the debt aforeſaid, to the intent that execution of the ſaid debt might not be thereof made; and our ſaid lord the king being unwilling that thoſe things, which in the ſame court of the ſaid late king were rightly acted and adjudged, ſhould be rendered void by art or

Fieri facias pro debito *awarded.*

deceit; therefore the ſheriff is commanded, that of the goods and chattels which were of the ſaid *Henry* at the time of his death in the hands of the ſaid *Elizabeth* to be adminiſtered, being in his bailiwic, he ſhould cauſe to be made the ſaid debt, if it may be thereof levied, and have the money thereof levied here, on [*the return*] to render to the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the debt aforeſaid; and if the ſaid debt cannot be levied in form aforeſaid, then if it can appear to the ſame ſheriff by inquiſition on that behalf to be taken, upon the oath of good and lawful men of his bailiwic, or by any other method whereby he may be the better certified thereof, that the ſaid *Elizabeth* hath ſold, eloined, waſted or converted, and diſpoſed to her own uſe, goods and chattels which were of the ſaid *Henry* at the time of his death, and have come to the hands of the ſaid *Elizabeth* to be adminiſtered, then by good, *&c.* he ſhould make known to the ſaid *Elizabeth*, that ſhe be here at the time aforeſaid, to ſhew, if, *&c.* why the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, ought not to have execution againſt her of the debt aforeſaid, to be levied of the proper goods and chattels of the ſaid *Elizabeth*, according to the form of the ſaid recovery, if, *&c.*

Si debitum levari non poſſit tunc ſi conſtat per inquiſitionem quod def. devaſt',

Sci. fa.

Clift's *Entr.* 662.

Like notice muſt be given of executing *Scire fieri & inquir.* as is given of trial, or of executing a writ of inquiry of damages.

Notice of executing Sci' fier. inquir'.

Cook

Cooke.

Hilary —— George *the ſecond.*

Declaration on a Scire facias *upon a judgment recovered in the late king's reign againſt the defendant and his wife (ſince deceaſed) executrix.*

Middleſex, *to wit,* IT was commanded to the ſheriff, Whereas *W. F.* eſq; in the court of our late ſovereign lord *George* the firſt, late king of *Great Britain*, &c. *to wit*, in *Eaſter* term in the 11th year of the reign of the ſaid late king, before Sir *Peter King*, knight, and his companions, then the ſaid late king's juſtices of the bench at *Weſtminſter*, by the conſideration of the ſaid court had recovered againſt *C. M.* late of *Weſtminſter* in the county of *Middleſex*, eſq; and the lady *E. M.* his wife, executrix of the teſtament and laſt will of *C.* lord *M.* her late huſband, deceaſed, lately called *C.* lord *M.* as well a certain debt of 391 *l.* as 50 *s.* which in the ſaid court of the ſaid late king were adjudged to the ſaid *W.* for his damages by occaſion of the detaining that debt to be levied of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death in the hands of the ſaid *C. M.* and lady *E. M.* to be adminiſtered, if they had ſo much in their hands; and if they had not, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *C. M.* and lady *E. M.* whereof they were convicted, as by the records and proceedings thereupon in the court of our lord the preſent king now here remaining manifeſtly appeareth; *Yet* execution of the ſaid judgment

Death of the wife.

Defendant adminiſtrator of his wife, and adminiſtrator de bonis non, &c. *of her teſtator.*

ſtill remaineth to be done, and the ſaid lady *E. M.* is dead, as the king hath heard from the information of the ſaid *W.* And becauſe, *&c.* by good, *&c.* he ſhould make known to the aforeſaid *C. M.* adminiſtrator of the goods and chattels which were of the ſaid lady *E. M.* and adminiſtrator, with the will of the ſaid *C.* lord *M.* annexed, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, unadminiſter'd by the ſaid lady *E. M.* that he ſhould be here at this day, *to wit*, on the octave of the Purification of the bleſſed *Mary*, to ſhew if any thing, *&c.* why the ſaid *W.* ought not to have execution againſt him of the debt and damages aforeſaid, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, being in the hands of the ſaid *C. M.* to be adminiſtered, according to the form of the recovery aforeſaid, if, *&c.* And now here at this day comes as well the ſaid *W.* by *F. P.* his attorney, as the ſaid *C. M.* ſummoned, *&c.* by *J. S.* his attorney; and the ſheriff, *to wit*, *J. R.* eſq; and *T. C.* eſq; now return, that he, by virtue of the ſaid writ to him directed by *R. H.* and *S. W.* good, *&c.* had made known to the ſaid *C. M.* that he ſhould be here at this day to ſhew in form aforeſaid, *&c.* And upon this the ſaid *W.* prayeth execution to be adjudged to him againſt the ſaid *C. M.* of the debt and damages aforeſaid, to be levied of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death not adminiſtered by

by the ſaid lady *E. M.* in the hands of the ſaid *C. M.*

And the ſaid *C. M.* by *J. S.* his attorney cometh and ſaith, that the ſaid *W.* ought not to have his execution againſt him of the debt and damages aforeſaid, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, becauſe he ſaith no goods or chattels which were of the ſaid *C.* lord *M.* at the time of his death not adminiſtered by the ſaid lady *E. M.* at the time of the death of the ſaid *E.* or at any time afterwards, have come to the hands of the ſaid *C. M.* to be adminiſtered; and that he the ſaid *C. M.* hath not, nor on the day of ſuing forth the ſaid writ, nor at any time afterwards, had any goods or chattels which were of the ſaid *C.* lord *M.* at the time of his death in the hands of him the ſaid *C. M.* to be adminiſtered, whereof he could have ſatisfied the ſaid *W.* of the debt and damages aforeſaid, or any parcel thereof: And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *W.* ought to have his execution againſt him of the debt and damages aforeſaid of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death. *Plea. No aſſets come to hands.*

And the ſaid *W.* ſaith, that he by any thing before alledged ought not to be barred from having his execution againſt the ſaid *C. M.* for the debt and damages aforeſaid, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, becauſe, he ſaith, that the ſaid writ of the ſaid *Replication. Aſſets come to hands.*

W.

W. was ſued forth on the 24th day of *January* in the year of his preſent majeſty's reign; and that the ſaid *C. M.* on the ſaid day of ſuing forth the ſaid writ had diverſe goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death in the hands of the ſaid *C. M.* to be adminiſtered, to the value of the debt and damages aforeſaid, wherewith he could have ſatisfied the ſaid *W.* for the debt and damages aforeſaid, *to wit*, at *Weſtminſter* aforeſaid; and this he prayeth may be inquired of by the county.

Thomſon.

Michaelmas ——— George *the ſecond.*

Declaration on a Sci. fa.' *upon a judgment for aſſets* in futuro *againſt an executrix.*

London, *to wit*, IT was commanded to the ſheriffs, Whereas *M. G.* widow, and *N. V.* lately in the court of our lord the preſent king here, before the juſtices of our lord the preſent king of the bench here, *to wit*, at *Weſtminſter*, by the judgment of the ſaid court had recovered againſt *K. M.* late of *London*, widow, executrix of the teſtament and laſt will of *H. M.* late of *London*, eſq; her late huſband deceaſed, 1480*l.* for their damages which they had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings made by the ſaid *H.* in his life-time to the ſaid *M.* and *N.* in *London*, to wit, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, as for

for their coſts and charges by them the ſaid *M.* and *N.* about their ſuit in that behalf expended, adjudged to the ſaid *M.* and *N.* by the ſaid court of our ſaid lord the king, before the juſtices of our ſaid lord the king at *Weſtminſter*, to be levied of the goods and chattels which were of the ſaid *H.* at the time of his death, which after the giving the ſaid judgment ſhould come to the hands of the ſaid *K.* to be adminiſtered, whereof ſhe was convicted, as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king before the juſtices of our ſaid lord the king here, *to wit*, at *Weſtminſter* aforeſaid manifeſtly appeareth. *And whereas* after the ſaid judgment was given, diverſe goods and chattels which were of the ſaid *H.* at the time of his death, to the value of the damages aforeſaid and above, have come to the hands of the ſaid *K.* to be adminiſtered, out of which ſhe could have ſatisfied the ſaid *M.* and *H.* of their damages aforeſaid, as the king has been given to underſtand by the information of the ſaid *M.* and *N.* And becauſe, *&c.* that by good, *&c.* they ſhould give notice to the aforeſaid *K.* that ſhe might be here at this day, *to wit*, on the morrow of St. *Martin*, to ſhew if any thing, *&c.* why the ſaid *M.* and *N.* ought not to have execution againſt her of the damages aforeſaid of the goods and chattels which were of the ſaid *H.* at the time of his death, which after the ſaid judgment was given have come to the hands of the ſaid *K.* to be adminiſtered, according

Suggeſtion of aſſets ſince come to defendant's hands.

to

to the form and effect of the recovery, if, &c. And now here at this day came as well the ſaid *M.* and *N.* by *J. H.* their attorney, as the ſaid *K.* by *J. S.* her attorney; and the ſaid *M.* and *N.* offered themſelves on the 4th day againſt the ſaid *K.* of the plea aforeſaid; and the ſheriffs now returned, that by *J. N.* and *R. R.* good, &c. they had given notice to the ſaid *K. M.* to be here at this day, to ſhew, &c. and upon this the ſaid *M.* and *N.* pray execution againſt the ſaid *K.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *H.* at the time of his death, which after the ſaid judgment was given have come to the hands of the ſaid *K.* to be adminiſtered, to be adjudged to them, &c. Upon which the ſaid *K.* ſaith, that after the ſaid judgment was given, no goods or chattels which were of the ſaid *H.* at the time of his death, have come to the hands of the ſaid *K.* to be adminiſtered, whereof ſhe could have ſatisfied the ſaid *M.* and *N.* of their damages aforeſaid, or of any parcel thereof; and of this ſhe putteth herſelf upon the country; and the ſaid *M.* and *H.* likewiſe: Therefore the ſheriffs are commanded, that they cauſe to come here twelve, &c. By whom, &c. And who neither, &c. To recogniſe, &c. Becauſe as well, &c.

Defendant appears.

Sheriffs return Scire fec.'

Defendant pleads no aſſets come to hand.

Iſſue.

You enter the writ of *Scire facias* and *Alias*, if any, on the prothonotary's remembrance roll, and give a rule thereon for the defendant to appear.

No costs on Sci. fa.' till plea.

The plaintiff on motion in the treasury may quash his own *Scire facias* without paying costs, though the defendant has appeared; for the practice of the court is, that no costs shall be paid on proceedings by *Scire facias* till a declaration be delivered, and the defendant has pleaded.

Term of the judgment not necessary.

In a *Scire facias* to revive a judgment it is not necessary to insert the particular term in which the judgment was given.

At common law, if after judgment the plaintiff sued not execution within the year, he had no remedy, but by an action on the judgment; but a *Scire facias* in personal actions is given by the statute of *Westminster* 2. *c.* 45. 2 *Inst.* 469, 470. *vide Salk.* 600.

Where no Sci. fa. if a Cesset execut.'

If there be a *Cesset executio* for a year, the plaintiff may within the next year take out execution without a *Scire facias.*

Scire facias must be sued out tho' execution stayed by injunction.

If the plaintiff be delayed from taking out execution within the year and a day by an injunction out of *Chancery*, he cannot after the injunction dissolved take out execution without reviving the judgment by *Scire facias*; but it will be no breach of the injunction to take out execution within the year, so as it be not executed, which will save the trouble of bringing a *Scire facias*, by continuing the execution on the roll by *Vic' non misit breve.* 6 *Mod.* 288.

Defendant charged in execution 4 years after judgment without Sci. fa.'

Execution by default was awarded on a *Scire facias* upon a judgment in debt, and the defendant four years afterwards being in the *Fleet* for another cause was brought into court by *Habeas corpus*, where he admitting himself

himself to be the same person was committed in execution *moraturus quousque* —— *Note post annum & diem absque novo Scire facias. Dyer* 214. *p.* 47.

On death of defendant. If a man recovers debt or damages by judgment, and the defendant dies, no execution lies against his executor without a *Scire facias.*

Or of plaintiff Sci. fa.' *must issue.* If a man has judgment for debt or damages, and dies before execution, his executor shall not have execution, tho' it be within the year, without a *Scire facias.*

Vide antea fol. 327. Death of either party after interlocutory judgment, and before final judgment.

But not on death of one where there are many plaintiffs or defendants. If there be two plaintiffs in a personal action, and one of them dies, that shall not put the other to a *Scire facias*; so if one of the defendants die. *Far.* 68. *Moor* 367. *pl.* 503. *Noy* 150. 5 *Mod.* 339. but a suggestion of the death must be made on record. *Salk.* 319.

Into what county Sci. fa. *on a judgment must issue.* On a judgment wherein the action was laid in *Cumberland* a *Scire* was brought in *Westmoreland*, and judgment was had thereon; but that judgment was reversed on error in the *Exchequer* chamber, for a *Scire facias* must be brought in the same county where the first action was laid. *Hob.* 4. 3 *Cro.* 228, & *vide Yel.* 218. *S. C.* for the diversity between a *Scire facias* on a judgment, and an action of debt on a judgment.

Into what county on a recognizance. If a recognizance of bail be taken before a judge at his chambers in *London*, and entered on record as taken in *London*, it was resolved

reſolved by all the prothonotaries, that the *Scire facias* ſhould be directed to the ſheriffs of *London*, and not to the ſheriff of *Middleſex*, 5 *Mar. Brook*, *Lieu*, 85. though the recognizance is not a perfect record 'till it be entered upon the roll; yet when it is entered, it is a record from the firſt acknowledgment, and binds perſons and lands from that time; for it is the acknowledgment before the judge that gives it the force of a record, though the inrolment be neceſſary for the teſtification and perpetuity of it. *Hob.* 195. But in the caſe of *Andrews* and *Harborne* the prothonotaries certified, that upon ſuch recognizance the *Scire facias* might be brought in *Middleſex*, or in *London*; and that it uſed to be brought either in *London* or *Middleſex*. 1 *Roll. Abr.* 891. *All.* 12. So where bail taken by commiſſioners in the county of *York*, a *Scire facias* lies againſt them either in the county of *York* or *Middleſex*. 2 *Lutw.* 1287. *Vide Salk.* 564, 600, 659.

Outlawry.

IN the following actions, *viz.* Treſpaſs, aſſault, caſe, covenant, account, debt, detinue and replevin, you may proceed to outlaw a man who is not eaſily to be arreſted, and hath not ſufficient eſtate in the county whereby he may be ſummoned, *&c.*

If the action be laid in *London*, the defendant will be ſooner outlawed than in another county, in regard that between the teſte and

Deft. ſooner outlawed in London *than in another county.*

and return of the exigent there must be five county days, which are held every month, and the *Hustings* in *London*, which answer the county days, are held every fortnight.

Of the Præcipe *for the original.*

You cannot outlaw a man on process with *Acetiams*; and if your original be only a *Clausum fregit*, the defendant may reverse the outlawry without bail, and therefore the best way is to make out a *Præcipe* for a special original, which is in this form, according to the nature of the action.

A Præcipe *for a special original on an* Indeb. assumpsit *for the charges of a funeral.*

London, If *T. J.* shall make, *&c.* then put, *&c. C. W.* late of *New Bond-street* in the county of *Middlesex*, upholster, that he be before our justices, at *Westminster*, on the morrow of the purification of the blessed *Mary*, to shew, wherefore whereas the said *C.* on the 10th day of *August* in the year of our lord 1738. at *London*, to wit, in the parish of St. *Mary le Bow* in the ward of *Cheap*, was indebted to the said *T.* in 60*l.* lawful money of *Great Britain*, as well for work, labour and care of the said *T.* about the funeral of one *R. F.* deceased, by the said *T.* before that time, at the special instance and request of the said *C.* done and performed, as for diverse materials and necessary things, by the said *T.* at the like special instance and request of the said *C.* at the costs and charges of the said *T.* on that occasion found and provided; and by the said *T.* in and about that funeral used and expended; and being so indebted the said *C.* in consideration thereof afterwards, *to wit*, on the same day and year

at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *C.* would well and truly pay to the ſaid *T.* the ſaid 60 *l.* when he ſhould be thereunto afterwards required. *And alſo whereas* the ſaid *C.* afterwards, *to wit*, on the day and year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *T.* at the like ſpecial inſtance and requeſt of the ſaid *C.* had before that time done and performed other work and labour in and about the funeral of one *R. F.* deceaſed, and at the like ſpecial inſtance and requeſt of the ſaid *C.* had found and provided at the coſts and charges of him the ſaid *T.* diverſe materials and neceſſary things on that occaſion, and had expended and uſed the ſaid materials and neceſſary things laſt mentioned in and about the laſt mentioned funeral, undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *C.* would, when he ſhould be thereunto required, well and truly pay and content to the ſaid *T.* not only all ſuch ſums of money as the ſaid *T.* reaſonably deſerved to have for his ſaid work and labour laſt above mentioned, but alſo all ſuch ſums of money, as the ſaid materials and neceſſary things laſt mentioned at the time of the finding and providing thereof, as aforeſaid, were reaſonably worth; and the ſaid *T.* averreth, that he reaſonably deſerved to have for his laſt mentioned work and labour 20 *l.* of like lawful money; and that the materials and ne-

Quantum meruit *thereon.*

ceſſary things laſt mentioned were at the time of the finding and providing thereof, as aforeſaid, reaſonably worth 40 *l.* of like lawful money, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid, of which afterwards, that is to ſay, on the ſame day and year aforeſaid, the ſaid *C.* there had notice: *Nevertheleſs* the ſaid *C.* no ways regarding his ſaid promiſes and undertakings made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *T.* in this behalf, has not paid to the ſaid *T.* the ſaid ſeveral ſums of money, or any part thereof, nor any ways contented him for the ſame (although the ſaid *C.* afterwards, *to wit*, on the 12th day of *Auguſt* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, was thereunto requeſted by the ſaid *T.*) But he hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *T.* to the damage of the ſaid *T.* of 60 *l.* as he ſaith,

Breach.

Returnable, *&c.*

You carry this *Præcipe* to the curſitor of the county, who will thereupon make out an original: If the *Præcipe* be carried to the curſitor before the eſſoin-day of a term, he will make the original returnable on any return of the precedent term, *vide antea, fol.* 210. You may return the original of courſe thus:

Of returning the original.

Pledges of proſecuting { *John Doe*, *Richard Roe.*

The

The within named *C. W.* hath nothing in our bailiwic by which he can be attached [or * ſummoned.]

J. B. eſq;
and
W. W. eſq; } ſheriffs.

You muſt carry the original thus returned to the filacer of the county, who will make out a *Capias*, *Alias* and *Pluries* all together, if the original will bear it, each of which writs muſt have 15 days between the teſte and return. After the *Capias*, *Alias* and *Pluries* are ſealed, you may return them ſeverally, after this manner:

Of making out the Capias, Alias *and* Pluries.

The within named *C. W.* is not found in our bailiwic.

Of returning them.

The anſwer of
J. B. eſq;
and
W. W. eſq; } ſheriffs.

I apprehend the plaintiff ought to make an affidavit of his debt on ſuing out the *Capias*, and endeavour to get the *Capias*, *Alias* and *Pluries* executed, if poſſible, and let them be returned by the ſheriff.

Every attorney ſhall file his warrant of attorney of the term wherein any *Exigent* is awarded, upon pain of 40*s.* for every time he offends, and is attainted by due examination

Warrant of attorney to be filed of the ſame term with the exigent.

* *Vide antea, fol.* 207, 210, 211.

tion of the juſtices of this court; ſuch warrant to be filed upon or before the eſſoin-day of every *Trinity* term, and within 21 days after the end of every other term. *Hil.* 14, 15 *Car.* 2.

Exigenter not to receive Pluries *before ſigned by clerk of the warrants.*

No exigenter ſhall receive any *Pluries capias* in order to make an exigent or proclamation thereon, before the ſame be ſigned or ſtamped by the clerk of the warrants, or his deputy, to the end it may appear, that the warrant of attorney therein is duly filed. *Hil.* 2, 3 *Jac.* 2.

Trinity *term in the thirteenth year of the reign of king* George *the ſecond.*

The warrant of attorney.

London. *T. J.* putteth in his place *L. R.* his attorney againſt *C. W.* late of *New Bond-ſtreet* in the county of *Middleſex*, upholſter, in a plea of treſpaſs on the caſe.

Exigenter, on receipt of the Pluries *ſtampt, to make out the exigent and proclamation.*

This warrant of attorney being filed, for which you pay 4*d.* the clerk of the warrants ſtamps the *Pluries*, which you thereupon carry to the exigenter of the county, who will make out an exigent and proclamation which you are to get ſealed, and carry to the ſheriff of the county in which you have laid the action, and the proclamation to the ſheriff of that county wherein the defendant dwells at the time of awarding the exigent.

If there happen not to be five county days between the teſte and return of the exigent, you muſt apply to the exigenter for an *Allocatur* to bring in the five county days; and the like muſt be in *London* for want of *Huſtings*. *Where an Allocatur neceſſary.*

You may make out your proceſs in order, and endeavour to take the defendant on any of them; and it is the ſafer way ſo to do.

Where any exigent ſhall be awarded, a writ of proclamation ſhall be made out of the ſame teſte and return as the writ of exigent directed to the ſheriff of the county where the defendant at the time of the exigent awarded ſhall be dwelling, which writ of proclamation ſhall contain the effect of the ſame action; and the ſheriff to whom the proclamation ſhall be directed ſhall make three proclamations, *viz.* one in open county court, one other at the general quarter-ſeſſions of the peace in thoſe parts, where the defendant at the time of the exigent awarded ſhall be dwelling; and one other one month at leaſt before the *Quint. exact'*, by virtue of the writ of exigent, at or near the moſt uſual door of the church or chapel of that town or pariſh where the defendant ſhall be dwelling at the time of the exigent ſo awarded; and if the defendant ſhall be dwelling out of any pariſh, then in ſuch place as aforeſaid of the pariſh next adjoining to the defendant's dwelling, and upon a *Sunday* immediately after divine ſervice. All outlawries pronounced, and no proclamation *When an exigent is awarded, a proclamation to be made out of the ſame teſte and return.*

Sheriff to make three proclamations.

awarded and returned, according to this ſtatute, are void.—*Stat.* 31 *Eliz. c.* 3. §. 1.

His fee. The ſheriff for making the proclamation at or near the church door, ſhall have 12*d.* *Same ſtat.* §. 1.

Officer who makes out the exigent to make out the proclamation. His fee. The officer in whoſe office the exigent ſhall be taken ſhall make out the proclamation, and ſhall take no more for making ſuch writ of proclamation, and entering it on record, but only 6*d.* *Stat.* 6 *Hen.* 8. *c.* 4. §. 3, 4.

Attornies to be careful that writs of proclamation be delivered. According to the proviſion of the ſtatute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and the ſheriffs to take care duly to execute the ſame. *Mich.* 1654.

Proclamation to be filed with the Cuſtos brevium. After the exigent and proclamation is returned, you file the proclamation with the *Cuſtos brevium*, and carry the exigent to the clerk of the outlawries, who will thereupon

Capias utlagatum *either general or ſpecial.* make out a *Capias utlagatum* either general or ſpecial, the one againſt the defendant's body, the other againſt his body, goods and lands, into as many counties as you ſhall think proper either in *England* or *Wales*.

If defendant appears on the exigent, no bail is required. If the defendant appears by *Superſedeas quia improvidè*, or doth truly render himſelf upon the exigent, no bail is requirable. *Mich.* 1654.

Sheriff not to diſcharge defendant arreſted on Capias utlagatum *without a* Superſedeas. No ſheriff, under-ſheriff, their deputies or bailiffs, ſhall ſet at liberty any perſon arreſted upon any *Capias utlagatum*, until he receive a *Superſedeas* according to law from the officer thereunto appointed. *Mich.* 165[illegible] *Stat.* 13 *Car.* 2. *c.* 2. §. 4.

N

No ſheriff, under-ſheriff, *&c.* ſhall ſet at liberty any perſon taken upon any writ of *Capias utlagatum*, nor diſcharge the lands or goods of any perſon outlawed, without a lawful *Superſedeas* under the ſeal of the court. *Hil.* 15, 16 *Car.* 2.

Upon affidavit made and filed, that any ſheriff, officer, or bailiff, has enlarged any perſon arreſted upon *Capias utlagatum* before judgment, without a lawful *Superſedeas* in that behalf, the perſon ſo offending ſhall pay 40*s.* to the party grieved, who ſhall have an attachment of courſe againſt ſuch ſheriff, officer, bailiff, or party offending, for payment of the ſame; and the party offending ſhall likewiſe undergo ſuch other puniſhment as by the court ſhall be thought fit. *Trin.* 2 *Jac.* 2. *Penalty of* 40*s.* &c.

Before the reverſing of any outlawry, or any *Superſedeas* made thereunto, the defendant ſhall give ſpecial bail, if the ſum or damages expreſſed in the original, whereupon the exigent was awarded, ſhall amount to the ſum of 10*l.* or upwards. *Hil.* 15, 16 *Car.* 2. *Trin.* 2 *Jac.* 2. *Before* Superſedeas *defendant to give bail if the cauſe of action be* 10*l.* *or upwards.*

Before any allowance of any writ of error, or reverſing of any outlawry be had, by plea or otherwiſe, through or by want of any proclamation to be had or made according to this ſtatute, the defendant in the original action ſhall put in bail, not only to appear and anſwer the plaintiff in the former ſuit in a new action, to be commenced for the cauſe in the firſt action, but alſo to ſatisfy the condemnation if the plaintiff ſhall begin *Defendant to give bail to ſatisfy the condemnation.*

his ſuit before the end of * *two terms* next after the allowing the writ of error, or otherwiſe avoiding the ſaid outlawry. *Stat.* 31 *Eliz. c.* 3. *ſ.* 3. *Mich.* 12 *Geo.* 1. the rule ſays of * *the term* next after, *&c.*

Outlawry after the death of the plaintiff not to be reverſed without bail to the executor.

No outlawry after the death of the plaintiff in the action ſhall be reverſed, without the defendant's appearing and putting in ſpecial bail (if the action requires it) to the executor or adminiſtrator of the plaintiff, or to the huſband and wife, where the wife while a *Feme* ſole ſued the defendant to an outlawry before marriage, provided that the defendant's attorney do, within 14 days after notice given of the defendant's intention to reverſe the outlawry, deliver the name of the executor or adminiſtrator of ſuch deceaſed plaintiff to the proper prothonotary. *Trin.* 2 *Jac.* 2.

On reverſing an outlawry defendant only to pay coſts to the exigent, and the fine.

Further coſts reſpited quouſque.

No defendant, who ſhall be outlawed and ſhall appear and reverſe ſuch outlawry, ſhall upon the reverſal pay to the plaintiff any ſum of money exceeding the uſual coſts of the *Exigent*, together with the fine paid to the king upon the original, and all further coſts ſhall be reſpited to the time of ſigning judgment for the plaintiff. *Trin.* 33 *Car.* 2.

No Superſedeas *to the exigent, unleſs put in before the day of appearance, to be allowed till coſts paid.*

Upon every writ of *Exigent*, if a *Superſedeas* be not put in thereto, at or before the day of appearance thereof, no *Superſedeas* ſhall by any ſheriff be allowed to any ſuch writ, until the defendant ſhall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof the full and juſt coſts of ſuit therein; and

upon

upon the reverſal of any outlawry the defendant ſhall, before the reverſal or any *Superſedeas*, pay to the plaintiff or his attorney, or leave in the court for him, the full coſts of ſuit to the *Exigent*. And where the ſheriff ſhall have taken an inquiſition, and extended the goods, chattels, *&c.* and returned the ſame into the *Exchequer*, ſuch further coſts ſhall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as the plaintiff hath been at in proſecuting the ſaid inquiſition, before any certificate of the reverſal ſhall be made by the clerk of the outlawries. *Trin.* 2 *Jac.* 2.

On reverſal defendant ſhall pay coſts to the exigent.

Where inquiſition taken, &c. further coſts to be taxed.

On making out a *Superſedeas* the defendant need not enter an appearance with the Exigenter; the *Superſedeas* itſelf is an appearance. *Dyer* 233.

Every defendant who ſhall be outlawed, and cauſe the ſaid outlawry to be reverſed, if the plaintiff thereupon ſhall not proceed within two terms next after notice of reverſing thereof, ſhall have coſts to be taxed by the prothonotary. *Trin.* 33 *Car.* 2.

On reverſing an outlawry, if plt. proceed not in two terms deft. to have coſts taxed.

A man may be outlawed after judgment, and that without any writ of *Alias*, *Pluries*, or proclamation. In this caſe you ſue out a writ of *Capias ad ſatisfaciendum*, which muſt have 15 days between the teſte and return; and if the defendant cannot be taken thereon, you get the ſheriff to return *Non eſt inventus* on the writ, and then carry it to the Exigenter, who will make out a writ of *Exigent* againſt the defendant, upon the return

Of outlawing after judgment.

turn of which you may have a *Capias utlagatum*, either general or ſpecial, and into as many counties as you pleaſe, either in *England* or *Wales*; and if the defendant's body be taken, or his goods extended thereon, he can obtain no diſcharge for either till he has made ſatisfaction.

No outlawry after judgment, pending a writ of error.

But if a writ of error be brought on the judgment, the plaintiff cannot proceed to outlaw the defendant pending the writ of error; for though the plaintiff may bring an action of debt on the judgment pending a writ of error, and proceed to judgment thereon, it has always been confined to reſtraining the plaintiff from taking out execution, and the *Exigent* being founded on the *Capias ad ſatisfaciendum* is a proceeding to execution, and therefore not juſtifiable.

It much behoves practiſers to be cautious when they outlaw, for if the defendant appears publickly, and the attorney can be affected with the knowledge of it, the court will, I apprehend, make him reverſe it at his own charge, if not otherwiſe puniſh him.

Of procuring the money levied on the defendant's goods.

Where the defendant's goods are taken on the ſpecial *Capias utlagatum*, the ſheriff, if the plaintiff requires it, will extend and appraiſe the goods by inquiſition, and for that purpoſe the plaintiff muſt firſt have them inventoried and appraiſed by proper perſons, to give evidence of their value to the jury; if they are not worth above 40*l.* they will hardly be worth the plaintiff's trouble to extend them. In *Middleſex* the ſheriff takes for the inquiſition as follows:

For

	l.	*s.*	*d.*	*l.*	*s.*	*d.*
For taking the inquiſition, ſchedule of the goods ſeized, and return —— ——				0	18	6
To the bailiff for ſummoning the jury —	0	4	0			
For the uſe of the room where the inquiſition is taken —— ——	0	1	0			
To every juryman 1*s.* —	0	12	0			
				0	17	0
				1	15	6

It may be proper to give the defendant notice of taking the inquiſition, as is done of executing a writ of inquiry.

If there be occaſion, a *Subpœna* for witneſſes may be made out in the following form.

GEORGE, &c. To *A. B. &c.* greeting. We command you, and every of you, that all excuſes being laid aſide, you be in your proper perſons before the ſheriff of our county of *Middleſex* on —— the —— day of —— —— at —— of the clock in the —— noon at the court-houſe at *Weſtminſter* [or at the *Three Tons* in *Brook-ſtreet* near *Holborn*] in the county of *Middleſex*, to teſtify and declare the truth according to your knowledge, upon a certain inquiſition to be taken by the ſaid ſheriff, on the oath of good and lawful men of his county, purſuant to our precept to inquire what lands and tenements, goods and chattels *W. S.* late of,

&c.

&c. was poſſeſſed of on the —— day of ——— in the year of our lord ——, on which day he was outlawed at the ſuit of *R. R.* And this you, either or any of you, are not to omit, under the penalty of 100*l.* for the default of each of you. Witneſs, *&c.*

When the *Capias utlagatum* is return'd with the inquiſition annexed, it muſt be carried to the clerk of the outlawries, who will tranſcribe, and tranſmit it into the *Exchequer*; then a clerk in the king's remembrancer's office muſt be employed, who will ſue out a writ of *Venditioni exponas*, by virtue of which the ſheriff will ſell the goods. If the money raiſed exceeds not 20*l.* the court of *Exchequer*, on motion, will order the money to be paid to the plaintiff; but if the money be above 20*l.* a petition to the following effect muſt be preſented to the lords of the treaſury.

To the right honorable the lords commiſſioners of his majeſty's treaſury.

The humble petition of R. R.

Sheweth,

Petition to the lords of the treaſury.

THAT *W. S.* late of, *&c.* being indebted to your petitioner in the ſum of 50*l.* your petitioner did in *November* laſt, at

at his very great charge, profecute the ſaid *W. S.* to an outlawry; and by virtue of a ſpecial *Capias utlagatum* directed to the ſheriff of *Middleſex*, ſeveral goods of the ſaid *W. S.* were ſeized, and found by inquiſition to be of the value of 45 *l.* which goods were afterwards ſold by the ſaid ſheriff, by virtue of a writ of *Venditioni exponas*, at the ſame price and value they were ſo appraiſed at, and the money thereupon raiſed now remains in the hands of the ſheriff of *Middleſex*.

That your petitioner's ſaid debt, and the charge he has already been at in proſecuting the ſaid outlawry, greatly exceed the ſum ſo remaining in the ſaid ſheriff's hands.

Wherefore your petitioner humbly prays your lordſhips, that the money ſo levied as aforeſaid may be paid over to your petitioner.

And your petitioner ſhall ever pray, &c.

This petition the lords of the treaſury will refer to their ſolicitor, now *Philip Carteret Webb*, eſq; The plaintiff muſt make an affidavit before one of the barons of the *exchequer*, to ſupport the allegations in the petition, particularly of his debt and the charge he has been at. This affidavit, with the attorney's bill, *Venditioni exponas* and return, muſt be laid before the ſolicitor of the treaſury, who being ſatisfied of the truth of the petition will make a report to their lordſhips accordingly, and then a warrant will iſſue to his majeſty's attorney general, to conſent that

that ſo much of the money levied as ſhall remain in the hands of the ſheriff, after deducting the uſual poundage, be paid to the plaintiff, towards ſatisfaction of his debt and coſts, on his moving the court of *exchequer* for an order for that purpoſe; this warrant muſt be delivered to the attorney general, who on the plaintiff's making ſuch motion by counſel, will conſent accordingly, and then, on producing the order under ſeal, the ſheriff will pay the money to the plaintiff.

The expence out of pocket of this application.

	l.	*s.*	*d.*
Duty and oath of the affidavit	0	2	0
To the ſolicitor of the treaſury	1	1	0
To his clerk —— ——	0	5	0
At the treaſury, for the reference, *&c.* warrant and poundage, when the ſum does not exceed 50*l.* you pay about —— ——	3	3	0
To the attorney general ——	2	2	0
To his clerk —— ——	0	2	6
Fee to the counſel to move ——	0	10	6
To the clerk in the *exchequer* according to the length of the proceedings, about ——	5	10	0

Of writs of error.

WHERE a party apprehends himſelf grieved by the judgment of this court, he may remove the ſame by a writ of error into the *King's Bench.* This writ is made out by the curſitor for the county wherein the action is laid; and is in this form:

A writ of error.

GEORGE the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, *&c.* To his truſty and well-beloved Sir *Thomas Reeve*, knight, chief juſtice of the bench, greeting. Foraſmuch as in the record and proceſs, and alſo in giving of judgment, in a plaint which was in our court before you and your aſſociates, our juſtices of the ſaid bench, by bill between *William Norman* and *Samuel Burrough*, gent. one of the attornies of our court of the bench, of a certain treſpaſs upon the caſe done to the ſaid *William* by the ſaid *Samuel*, as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *Samuel*, as by his complaint we are informed, we, willing that the ſaid error, if any be, be duly amended, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given thereupon, then you ſend to us diſtinctly and plainly under your ſeal, the record and proceſs of the ſaid plaint, with all things touching the ſame, and this

this writ; ſo that we may have them on the octave of St. *Hilary*, whereſoever we ſhall then be in *England*; that inſpecting the record and proceſs aforeſaid, we may cauſe farther to be done thereupon for amending the ſaid error, as of right, and according to the law and cuſtom of *England*, ſhall be meet to be done. Witneſs *Caroline*, queen of *Great Britain*, &c. guardian of the ſame realm, &c. at *Weſtminſter*, the 26th day of *November* in the 10th year of our reign. *Burgh.*

Of allowing it. You pay for this writ 13 *s. viz.* 2 *s.* 6 *d.* the curſitor's fee and ſeal, and 10 *s.* 6 *d.* the king's duty. You carry this to the clerk of the errors to be allowed, for which you pay 2 *l.* 2 *s.* 6 *d.* whereupon he gives you a note directed to the attorney of the adverſe party, ſignifying his allowance of the writ, which notice you muſt deliver accordingly.

Writ of error no Superſedeas *on any ſingle bond for debt, bond conditioned for payment of money only, debt for rent, or on any contract. Unleſs bail put in.*

No execution ſhall be ſtayed upon any writ of error, or *Superſedeas* thereupon to be ſued for the reverſing of any judgment given in any action, or bill of debt, upon any *ſingle bond for debt*, or upon any *obligation*, with *condition for the payment of money only*; or upon any action or bill of *debt for rent*, or upon any *contract*, unleſs ſuch perſon in whoſe name ſuch writ of error ſhall be brought, with two ſufficient ſureties, ſuch as the court (wherein ſuch judgment is given) ſhall allow of, ſhall firſt before ſuch ſtay made, or *Superſedeas* awarded, be bound unto the party for whom ſuch judgment is given, by recognizance to be acknowledged in the ſame court,

court, in double the ſum adjudged to be recovered by the ſaid former judgment, to proſecute the ſaid writ of error with effect; and alſo to pay (if the ſaid judgment be affirmed) the debt, damages and coſts adjudged upon the former judgment; and all coſts and damages to be awarded for the ſame delaying of execution. *Stat.* 3 *Jac.* 1. *c.* 8.

To proſecute with effect.
Pay the debt, &c.
And coſts for delay of execution.

And no execution ſhall be ſtayed by any writ of error, or *Superſedeas* thereupon, after any verdict and judgment thereupon obtained in any action of *debt*, on ſtatute 2 *Edw.* 6. for *not ſetting forth of tithes*, nor in any action upon the *caſe*, *upon* any *promiſe for payment of money*, action *ſur trover*, action of *covenant*, *detinue* and *treſpaſs*, unleſs ſuch recognizance, and in ſuch manner, as by the ſaid act 3 *Jac.* 1. is directed, ſhall be acknowledged in the ſaid court where ſuch judgment is given. The ſecond *ſtat.* 13 *Car.* 2. *c.* 2. §. 8, 9.

Writ of error no Superſedeas *after verdict. On action on Stat.* 2 Ed. 6. *Promiſe for payment of money, trover, covenant, detinue and treſpaſs. Unleſs bail as aforeſaid.*

And if any perſon ſhall ſue or proſecute any writ of error for reverſal of any judgment whatſoever given *after any verdict*, and the ſaid judgment ſhall be affirmed, then ſuch perſon ſhall pay unto the defendant in the ſaid writ of error his double coſts, to be aſſeſſed by the court where the writ of error ſhall be depending, for the delaying of execution. *Same ſtatute*, §. 10.

On writ of error after verdict double coſts if judgment affirmed.

And no execution ſhall be ſtayed by writ of error, or *Superſedeas* thereupon, after verdict and judgment thereupon, in any action perſonal whatſoever, unleſs a recognizance with condition, according to the ſtatute 3 *Jac.*

Writ of error no Superſedeas *after verdict in any action perſonal, unleſs bail as aforeſaid.*

Jac. 1. ſhall be firſt acknowledged in the court where the judgment ſhall be given. In writs of error brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution ſhall be ſtayed, unleſs the plaintiff in ſuch writ of error ſhall be bound unto the defendant in ſuch writ of dower, or action of *ejectione firmæ*, in ſuch reaſonable ſum as the court to which ſuch writ of error ſhall be directed, ſhall think fit, with condition that if the judgment ſhall be affirmed, or that the ſaid writ of error be diſcontinued in default of the plaintiff therein, or that the ſaid plaintiff be nonſuit in ſuch writ of error, that then the plaintiff ſhall pay ſuch coſts, damages, and ſum and ſums of money, as ſhall be awarded upon ſuch judgment affirmed, diſcontinuance or nonſuit had. *Stat.* 16, 17 *Car.* 2. *c.* 8. §. 3.

Nor after verdict in dower or ejectment.

Unleſs plt. in error be bound, &c.

On affirmance, diſcontinuance or nonſuit, to pay coſts.

The court, wherein ſuch execution ought to be granted upon ſuch affirmance, diſcontinuance or nonſuit, ſhall iſſue a writ to inquire, as well of the meſne profits, as of the damages by any waſte committed after the firſt judgment in dower or *Ejectione firmæ*; and upon the return thereof, judgment ſhall be given and execution awarded for ſuch meſne profits and damages, and alſo for coſts of ſuit. *Same ſtat.* §. 4.

On affirmance, &c. writ to inquire of the meſne profits, &c.

This act not to extend to any writ of error to be brought by any executor or adminiſtrator, nor to any action popular, nor to any action upon any penal law or ſtatute (except action of debt for not ſetting forth of tithes) nor

This act not to extend to executors, &c.

Penal ſtatutes, &c.

nor to any indictment, preſentment, inquiſition, information or appeal. *Same ſtat.* §. 5. *Nor indictments, &c.*

To aſcertain the practice of this court, and ſettle for the future what ſhall be deemed a reaſonable ſum for the penalty of the recognizance, to be entered into where a writ of error is brought upon any judgment after verdict in ejectment or dower; it is ordered, that the recognizance to be entered into on every ſuch occaſion, purſuant to the ſtatute 16 & 17 *Car.* 2. ſhall be taken in a penal ſum, to the amount of two years value of the premiſſes compriſed in the verdict; and double coſts recovered, ſubject to the condition mentioned in the ſaid act. *Trin.* 24 & 25 *Geo.* 2. *In what penalty recognizance ſhall be taken on a writ of error after verdict in ejectment, or dower.*

Judgment in debt on a bond conditioned for the performance of covenants, but notwithſtanding the condition did not appear on the record, the court held, that the matter of bail being examinable by affidavit, and the bond being conditioned as above, bail was not required on the writ of error. *Spinks* and *Bird*, *Mich.* 10 *Geo.* 2. *No bail in error on bond for performance of covenants, though condition did not appear on record.*

Judgment in debt on bond conditioned for payment of 300 *l.* mentioned in a ſurrender in mortgage of copyhold lands; writ of error brought, and bail ordered. *Wood* and *Armſtrong*, *Mich.* 12 *Geo.* 2. *Bail in error on judgment upon bond for payment of money mentioned in a mortgage.*

Scire facias on a recognizance of bail in error, award of execution thereon againſt the bail, who bring a writ of error upon that award of execution. No bail is required on *No bail required on writ of error brought by bail in error.*

this writ of error, for that would be bail *ad infinitum.*

No execution Non obſtante errore, *without certificate of* Non pros *ſigned.*

No attorney ſhall make out any execution *Non obſtante brevi de errore* until he has had certificate from the clerk of the errors, that the record is not removed, and a *Non pros* thereupon duly ſigned. *Trin.* 28 *Car.* 2.

Writ of error to be delivered to the clerk of the errors. And till then no ſtay of execution.

All writs of error ſhall be forthwith delivered to the clerk of the errors for the time being; and no one ſhall be obliged to forbear ſuing out execution by pretence of any writ of error, before the writ of error ſhall be delivered to the clerk of the errors. *Same rule*, and *Mich.* 28 *Car.* 2.

Held, that a writ of error is not a *Superſedeas* from the time of the ſealing, but from the delivery to the clerk of the errors. *Mich.* 15 *Geo.* 2. *C. B. Meriton* v. *Stevens. Hil.* 18 *Geo.* 2. *C. B. Sykes* v. *Dawſon.*

Where bail required, bail to be put in within 4 days.

And in caſes where ſpecial bail is required unleſs the plaintiff on ſuch writ of error ſhall within four days after the delivery thereof put in bail according to law, and obtain a writ of *Superſedeas* thereon, the defendant may proceed to execution notwithſtanding ſuch writ of error. *Mich.* 28 *Car.* 2.

Aliter *execution.*

Bail to be perfected in 4 days after exception.

In all caſes where bail ſhall be filed on writ of error, ſuch bail ſhall likewiſe be perfected within four days after exception taken thereto; or in default thereof the clerk of the errors ſhall *Non pros* ſuch writ of error. *Mich.* 6 *Geo.* 2.

No execution for not tranſcribing without certificate.

After a writ of error ſhall be duly allowed and a *Superſedeas* thereupon obtained, no execution ſhall be made for not tranſcribing

record into the *King's Bench* without a certificate in writing by the clerk of the errors, that the plaintiff in such writ of error made default in transcribing the record into the *King's Bench*, according to a rule of court to be first given of course. *Mich.* 28 *Car.* 2.

Of perfecting bail on rule for better bail in vacation.

If a rule for better bail in error is served in vacation, the plaintiff in error has not of course, till the next term to perfect his bail, but ought to justify before a judge; and if the defendant in error be not satisfied with that, then the plaintiff in error, having done every thing in his power, has until the next term to perfect his bail.

Execution after error, tho' before notice, void.

An execution sued out after a writ of error allowed is void, whether the party have notice of the writ of error or not; but if he have not notice of it, he is not punishable for a contempt, though restitution ought to be made. *Smith* v. *Cave*, 3 *Lev.* 312.

Debt on judgment after error.

After a writ of error brought on a judgment in this court, an action of debt may be brought upon the judgment pending the writ of error; but then the plaintiff ought to declare on the whole matter, *viz.* of the judgment in this court, of the removal by writ of error, and that the judgment is still in full force, *prout patet per record' inde in banco regis.* *Gale* v. *Till*, 3 *Lev.* 396. *V. antea fol.*

Debt on judgment pending error, plt. may proceed to judgment, but can't have execution if defi. applies.

If an action of debt be brought on a judgment pending a writ of error in the original action, the plaintiff may proceed to judgment, but not to take out execution till the writ of error be determined. *Coe* and *Allam*, *Trin.*

Trin. 9 *Geo.* 1. *Jackſon and Ducket*, *Hil.* 13 *Geo.* 1. But the plaintiff may take out execution notwithſtanding the writ of error, if the defendant does not apply to the court to ſtay execution. *Humphreys* and *Daniel*, *Paſ.* 9 *Geo.* 2. The plaintiff, pending a writ of error, cannot have an *Exigent poſt ca. ſa.* on the original judgment. *Spinks* and *Bird*, *Paſ.* 10 *Geo.* 2.

Debt on recognizance againſt bail, pending error, proceedings ſtayed.

If a writ of error be brought on a judgment, and the plaintiff brings an action of debt on the recognizance againſt the bail in the original action, pending the writ of error, the court will ſtay the proceedings till the writ of error is determined; for if the plaintiff might proceed to judgment againſt the bail, they would be thereby deprived of an opportunity of ſurrendering the defendant. *Newman* and *Butterworth*, *Hil.* 8 *Geo.* 2.

If writ of error abates by death of chief juſtice, execution with leave of the court.

If a writ of error be brought on a judgment in this court, and the chief juſtice dies [before he has returned the writ of error] whereby the writ is abated, execution may be taken out with leave of the court; but if taken out without leave it will be ſet aſide, and reſtitution ordered. *Cranborne* and *Quenel*, *Thornton* and *Hays*, *Hil.* 9 *Geo.* 2.

Of tranſcribing.

At the return of the writ of error a rule muſt be given with the clerk of the errors, by the defendant in error, for the plaintiff to tranſcribe the writ of error into the *King's Bench*, which rule will be out in eight days after ſervice thereof on the plaintiff in error, or his attorney; and if the record be not tranſcribed in eight days, the clerk of the errors

errors will sign a *Non pros.* The rule to transcribe may be served on the plaintiff in error, and need not be served on his attorney.

What time the clerk of the errors takes to transcribe.

If the writ of error be returnable the first day of a term, the clerk of the errors takes the whole term to transcribe the record in, and does not carry in the transcript until the last day of that term; and if the writ of error be returnable on any other return than the first return of a term, he takes the whole subsequent vacation to transcribe in, and carries in the record on the first day of the next term.

After the transcript is carried in, the whole proceedings are in the *King's Bench.* See the *Attorney's Practice in the Court of King's Bench.*

Leave to file warrant of attorney after error brought denied.

The plaintiff had obtained judgment in *Trin.* 1726. Error was brought in *Trin.* 1727. and the want of a warrant of attorney had been assigned for error, and a *Certiorari* taken out and returned, that there was no warrant of attorney, whereupon the plaintiff applied to the court for leave to file his warrant of attorney. After hearing *Chesshyre pro Quer.* and *Whitaker* and *Raby pro Def.* and great consideration, the court refused to let the warrant of attorney be filed. *Nipson* and *Quilter*, *Mich.* 1 *Geo.* 2.

Warrant of attorney amended after error brought.

The plaintiff has brought a *Scire facias* on a recognizance of bail, and had filed a warrant of attorney *de pl'ito transgr. super casum super scire facias*; error was brought, and the want of warrant of attorney assign-

ed for error, and a *Certiorari* returned, that there was no warrant of attorney. The plaintiff moved to amend the warrant of attorney, by making it *de placito debiti ſuper Sci. fa.* and upon hearing *Branthwayte pro Quer.* the court gave leave to amend. *Societas Belgica ad indos occidentales negotians* v. *Henriques & al'*, *Paſ.* 1 *Geo.* 2. 2 *Brownl.* 167. 2 *Coke* 135.

Record amended after error brought.

After error brought the record was ordered to be amended, by inſerting at the top of the roll *from the day of St. Martin* in *fifteen days*, *in the ninth year*, &c. The cauſe of action having aroſe in *Michaelmas* term. *Deacon* and *Vivian*, *Paſ.* 9 *Geo.* 2.

The like on payment of coſts, if plaintiff in error did not proceed.

Judgment roll amended after error brought and *In nullo eſt erratum* pleaded, by ſtriking out the words *ought to*, and inſerting the word *do*, the judgment being, that the plaintiff *ought to recover*, inſtead of *do recover*: This amendment was ordered without coſts, if the plaintiff in error ſhould proceed; *aliter* coſts were to be paid. *Foſter* and *Blackwell*, *Paſ.* 10 *Geo.* 2.

No diſcontinuance after error without coſts.

Judgment *pro Quer.* on demurrer, but not entered on record. Error brought, the court refuſed to let the plaintiff diſcontinue without paying the coſts on the writ of error. *Pym* and *Warren*, *Mich.* 6 *Geo.* 2.

Said that a *Scire facias* on a recognizance of bail upon a writ of error need not ſet forth the condition of the recognizance. *Hil.* 17 *Geo.* 2. *C. B. Malland* v. *Jenkins.*

FH
MVSEVM
BRITANNICVM

Replevin.

THIS ſuit may be by original out of chancery returnable in this court, but is moſt uſually commenced in the county court, and removed into this court by writ of *Recordari facias loquelam* commonly called a *Refalo*, taking its name from the firſt ſyllable of each word in the name of the writ, *viz.* Recordari facias loquelam; but if the ſuit be firſt commenced in an inferior court of record, as in *London*, then it muſt be removed into this court by writ of *Certiorari*, for the *Refalo* doth go to a court of record, becauſe there the ſuit is already recorded. In order for a *Refalo* you make out a *Præcipe* to the curſitor of the proper county in the following form, *viz.*

Eſſex, *to wit.* *REFALO* for (either plaintiff or defendant, naming them) of a plaint between *Richard Knightsbridge* againſt *John White* and *William Sell*, for taking and unjuſtly detaining the cattle, goods and chattels of the ſaid *Richard*.

Returnable from Eaſter *day in* 15 *days.*

This *Præcipe* you deliver to the curſitor who will make out the writ, and then you carry it to the under-ſheriff who will return it.

The ſuit may be removed either by the plaintiff or defendant.

If

Of proceeding if Refalo *brought by plaintiff.*

If the plaintiff in replevin brings the *Recordari facias loquelam*, he files it, when returned, with the filacer of the county, and gives a rule for the defendant to appear, and in default thereof may have a *Pone*, *Distringas*, *&c.*

If by defendant.

If the defendant brings the *Recordari facias loquelam*, he also files it, when returned, with the filacer, and gives a rule for the plaintiff in replevin to declare, and in default of a declaration may have a writ of return *Habend.*

Where notice of filing Refalo, *and calling for a declaration necessary.*

If the defendant doth not file the *Recordari facias loquelam* at the day of the return, or at least on the appearance day of the return, he must give the plaintiff's attorney notice of filing it; it is said there is no occasion to call for a declaration; however, it is but fair practice and the safer method, to call upon the plaintiff's attorney for the declaration.

When Procedendo *shall go.*

If the defendant brings the *Refalo* and doth not get it returned, and file it within two terms, the plaintiff may have a certificate thereof from the filacer, and thereupon the cursitor will make him out a writ of *Procedendo*, upon which he may proceed in the court below.

See the second volume for declarations, *&c.* in replevin.

The particular place of taking the goods ought to be mentioned in every declaration in replevin. — And the plea of *Cepit in alio loco* is a plea in bar and not in abatement, and

and doth not require an affidavit, nor to be pleaded in four days after delivering the declaration.

A writ of ſecond deliverance is in the nature of a *Superſedeas* to the return *Habend.* if brought before the return *Habend.* be executed.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. We command you, that in your full county you cauſe the plaint to be recorded, which is the ſame county, without our writ, between *Richard Knightsbridge*, and *John White*, and *William Sell*, of the cattle, goods and chattels of the ſaid *Richard*, taken and unjuſtly detained as it is ſaid, and that you have the ſaid record before our juſtices at *Weſtminſter*, from *Eaſter* day in fifteen days under your ſeal, and the ſeals of four lawful knights of the ſame county, of ſuch as ſhall be preſent at the ſaid record, and that you prefix the ſame day to the parties, that then they may be there ready to proceed in the ſaid plaint as ſhall be juſt; and have you there the names of the ſaid four knights, and this writ. Witneſs ourſelf at *Weſtminſter* the ſixth day of *March* in the fourteenth year of our reign. Let execution be done of this writ, if the ſaid *Richard* deſire it, otherwiſe not.

Browne.

Recordari facias loquelam,

	s.	*d.*
Duty	1	6
Curſitor	2	6
	4	0

By

The return. By virtue of this writ to me directed in my full county court, held for the county of *Eſſex* at *Chelmsford* in the county aforeſaid, the one and thirtieth day of *March* in the year within mentioned, I cauſed the plaint between the parties within named to be recorded, and have that record ready before the juſtices of our lord the king at *Weſtminſter* at the day within mentioned, under my ſeal, and the ſeals of *Richard Cox*, *Charles Tabor*, *Henry Burdock*, and *Samuel Barwick*, four lawful knights of the ſame county, who were preſent at the recording the ſaid plaint; and I have prefixed the ſame day to the ſaid parties, that they be then before the ſaid juſtices of our ſovereign lord the king at *Weſtminſter*, to proceed therein according to juſtice as by the ſaid writ I am commanded.

The reſt of the execution of this writ appears in a certain ſchedule to the ſaid writ annexed.

The anſwer of
James Hannol, eſq; ſheriff.

Eſſex, *to wit.* AT my county court held at *Chelmsford* in the county aforeſaid, the fifth day of *February* in the year of our lord 1739, (among other things) it is thus recorded.

Richard Knightsbridge complains of *John White*, and *William Sell*, of a plea of taking and unjuſtly detaining of his cattle, goods and chattels, *&c.*

Pledges

Pledges to profecute, { *John Mansfield* of *Hoſier Lane*, *London*, watch-ſpring maker. *John Beſouth* of *Stratford Langthorne* in the county of *Eſſex*, gardiner.

Thomas Bowes, eſq; ſheriff.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. Put by ſureties and ſafe pledges, *John White* and *William Sell*, that they be before our juſtices at *Weſtminſter*, from the day of the holy *Trinity* in three weeks, to anſwer to *Richard Knightſbridge* of a plea, wherefore they took the cattle, goods and chattels of the ſaid *Richard*, and them unjuſtly detained againſt gages and pledges, as he ſaith, and to ſhew, wherefore they have not appeared in our court before our juſtices at *Weſtminſter*, from *Eaſter* day in fifteen days laſt paſt, as the day prefixed to them; and have you there the names of the pledges and this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the 29th day of *May* in the 14th year of our reign. *Boycott.*

6 *June* 1741. *R.* by *R.*

Pone *in replevin.*

	l.	*s.*	*d.*
Filing *Refalo* with filacer ——	0	1	0
Rule to appear —— ——	0	1	4
Pone and duty —— ——	0	3	6

Fines

Fines.

FINES are uſed as common aſſurances for the conveyance of lands, and are of ſeveral ſorts, *viz.*

1. *Sur cognizance de droit, come ceo que il ad de ſon done.*
2. *Sur done, grant et render.*
3. *Sur cognizance de droit tantum.*
4. *Sur conceſſit.*
5. *Sur releaſe.*

Theſe are for ſeveral purpoſes, but the firſt is the moſt uſual, and of that only we ſhall treat of here, the reſt being but ſeldom made uſe of.

Methods of taking a fine. Fines are taken either with or without a *Dedimus poteſtatem.*

Without a Dedimus.

1. In court, or
2. By the chief juſtice out of court.

By Dedimus.

1. By any of the judges, or by a ſerjeant at law (and in this caſe a *Dedimus* may be taken out after the caption, but before the judge or ſerjeant will return the caption) or
2. By commiſſioners named in the *Dedimus*, and therefore in this caſe the *Dedimus* muſt be taken out before the caption.

Of

Of paſſing a fine in court.

In this caſe you get the writ of covenant before the caption, and for that purpoſe you make out a *Præcipe* to the curſitor in the following form, according to the nature of the caſe.

Præcipe *for writ of covenant.*

Middleſex, *to wit*, Command *A. B.* gentleman and *E.* his wife, that juſtly, *&c.* they perform to *C. D.* the covenant made between them, of one meſuage and one garden, with appurtenances in *B.* and unleſs, *&c. Returnable*, &c.

After you have got the writ of covenant, for which you pay 7*s.* 6*d.* you ingroſs the *Præcipe* and concord in parchment in the following form.

Præcipe *and concord.*

Middleſex, *to wit*, Command *A. B.* gentleman and *E.* his wife, that juſtly, *&c.* they perform to *C. D.* the covenant made between them, of one meſuage and one garden, with the appurtenances in *B.* and unleſs, *&c.*

And the agreement is ſuch, *to wit*, that the aforeſaid *A.* and *E.* have acknowledged the aforeſaid tenements, with the appurtenances to be the right of him the ſaid *C.* as thoſe which the ſaid *C.* hath of the gift of the aforeſaid *A.* and *E.* and theſe they have remiſed and quit claimed from them the

the ſaid *A.* and *E.* and the heirs of the ſaid *A.* to the aforeſaid *C.* and his heirs for ever: And moreover the ſaid *A.* and *E.* have granted for them and the heirs of the ſaid *A.* that they will warrant to the aforeſaid *C.* and his heirs, the aforeſaid tenements, with the appurtenances, againſt them the ſaid *A.* and *E.* and the heirs of the ſaid *A.* for ever: And for this, *&c.*

You then go with the conuſors to *Weſtminſter*, and give the writ, *Præcipe* and concord, to a ſerjeant's clerk, and he will get it paſſed for you; the wife muſt be examined by one of the judges, as to her free conſent, without coercion of her huſband.

Before the chief juſtice, a judge, or ſerjeant.

If the fine be to be acknowledged before the chief juſtice, a judge, or ſerjeant at law, you ingroſs the *Præcipe* and concord on parchment, as before, and make another copy of them on paper, and write under each of them on the left hand ſide thus:

> Taken and acknowledged the day of in the thirtieth year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, &c. Before me.

The concord ingroſſed on parchment, and the paper copy thereof, muſt be ſigned by the cognizors; you then go with the cognizors before the chief juſtice, judge, or ſerjeant, who will take the caption, examining the wife as before; the paper copy is kept by

by the clerk of the chief juſtice, judge, or ſerjeant; you pay for the caption 12 *s.* 6 *d.*

If the fine be taken by a judge (not being the chief juſtice,) or by a ſerjeant, you ſue out a *Dedimus poteſtatem*, and for that purpoſe you make out a *Præcipe* for the curſitor as followeth:

Middleſex, *to wit*, Command *A. B.* gentleman, and *E.* his wife, that juſtly, *&c.* they perform to *C. D.* the covenant made between them of one meſuage, and one garden, with the appurtenances, in *B.* And unleſs, *&c.*

De. po. To [*naming the judge or ſerjeant:*] You pay for this *Dedimus* 10 *s.* 8 *d.* And deliver it to the judge, or ſerjeant's clerk, who will get it returned for you.

If the fine be to be taken by ſpecial commiſſioners, you make a *Præcipe* for the curſitor in the following form, according to the nature of your caſe.

Eſſex, *to wit*, Command *C. K.* and *L.* his wife, that juſtly, *&c.* they perform to *D. B.* gentleman, the covenant, *&c.* of twenty acres of land with the appurtenances in *C.* And unleſs, *&c.*

De. Po. directed to { *J. B.* knight. *R. R.* *C. M.* *S. W.* *J. W.*

You pay for this *Dedimus* 1 *l.* 5 *s.* 8 *d.*

Then you ingroſs the *Præcipe* and concord in parchment, in this form:

Eſſex, *to wit*, Command *C. K.* and *L.* his wife, that juſtly, *&c.* they perform to *D. B.* the covenant made between them of twenty acres of land, with the appurtenances in *C.* And unleſs, *&c.*

And the agreement is ſuch, that is to ſay, that the aforeſaid *C.* and *L.* have acknowledged the aforeſaid tenements, with the appurtenances, to be the right of him the ſaid *D.* as thoſe which the ſaid *D.* hath of the gift of the aforeſaid *C.* and *L.* and thoſe they have remiſed and quit-claimed from them the ſaid *C.* and *L.* and the heirs of the ſaid *C.* to the aforeſaid *D.* and his heirs, for ever. And moreover the ſaid *C.* and *L.* have granted for them and the heirs of the ſaid *C.* that they will warrant to the aforeſaid *D.* and his heirs, the aforeſaid tenements, with the appurtenances, againſt them the ſaid *C.* and *L.* and the heirs of the ſaid *C.* for ever. And for this, *&c.*

Taken and acknowledged the day of , in the thirtieth year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, &c. Before

Any two of the commiſſioners may take the fine, examining the wife ſeparate and apart from the huſband, as to her free conſent,

ſent, without coercion from her huſband, to paſs the fine and part with her intereſt in the lands, telling her the conſequence of her acknowledging the fine; the *Præcipe* and concord ſhould be read to the cognizors, and then ſigned by them, and the commiſſioners ſign the caption; and then annex the *Præcipe* and concord to the *Dedimus*, and the commiſſioners ſubſcribe their names to the return, which is to be indorſed on the back of the *Dedimus* in the following words; *viz.*

The execution of this writ appears in a certain ſchedule hereunto annexed.

Vide poſtea the *rule*; as the affidavit neceſſary of the due taking of a fine by *Dedimus*, and a judge's *Allocatur* thereon.

As to paſſing the fine through the offices; you carry the writ of covenant to the *Alienation-Office* in the *King's-Bench Walks* in the *Temple*, to compound for the fine, for which the commiſſioners have fixed rules, according to the parcels in the writ; if a commiſſioner be preſent, you compound for the fine immediately, and pay the fine and the fees, the latter generally about 2 *s.* The clerk keeps the writ generally two days to enter it in the office-books; having got the writ from the *Alienation-Office*, you ingroſs a warrant of attorney on parchment in the following form, according as your caſe requires.

Michaelmas *term in the* 30*th year of king* George *the ſecond.*

Eſſex, *to wit.* D. *B.* putteth in his place *A. B.* his attorney, to proſecute a writ of covenant againſt *C. K.* and *L.* his wife of lands in *C.*

This warrant you file with the clerk of the warrants in *Clifford's Inn*, for which you pay 4*d.* and 4*d.* for every *Poſt terminum*; for the warrant of attorney muſt be of that term in which the writ of covenant was returnable.

Then you carry the writ of covenant to the curſitor, to mark the prefine at the bottom, which is done *gratis.*

You then carry the writ of covenant to the return-office, at Mr. prothonotary *Wegg's* office in the *Temple*; you have it back on the ſecond day, and pay 1*s.* 6*d.* If the parcels are in *London* or *Middleſex*, you leave a note with it to the following purpoſe:

A. D. plaintiff, *C. D.* defendant. } Of one meſuage, &c. [without naming more of the parcels,] in the pariſh of St. *James Weſtminſter*, in *Middleſex.*

Mr. *A. B.* of *King's Street*, in the pariſh of St. *Margaret*, *Weſtminſter*, cheeſemonger, will pay the poſt-fine.

You then carry the writ of covenant to the office of the *Cuſtos Brevium*, in *Bridges Court* in the *Temple*, to be entered, and three days

days after you fetch it away, carrying then with you the concord and *Dedimus* (if any) to have the proclamations indorſed; you pay here 3 *s.* 8 *d.* and 1 *s.* 8 *d.* for every *Poſt terminum*, if any.

Then annex to the writ of covenant, the concord and *Dedimus* (if any), and leave them at the king's ſilver-office in *Old Crown-Office Row* in the *Temple*; you pay here 1 *s.* 8 *d.* for the caption, and 4 *d.* for every other caption, if more than one, and fetch the writ *&c.* from this office the third day after you left it.

Then you carry the writ, concord, *&c.* to the chirographer's office, to make the indentures; which you have in about a week's time.

WHEREAS by a rule of this court, made in the thirteenth year of the reign of his late majeſty king *George*, it was ordered, that no fine whatſoever taken and acknowledged before any commiſſioners, by virtue of a writ of *Dedimus poteſtatem* to them directed, be allowed to paſs, unleſs ſome perſon preſent when ſuch fine was taken and acknowledged did perſonally appear before the lord chief juſtice, or ſome other juſtice of this court, and was examined upon oath touching the due execution thereof, and particularly whether ſuch perſon knew the parties acknowledging ſuch fine; which rule has been found by experience to be attended with inconveniencies, and has not anſwered all the

good purpoſes for which it was intended; for remedy thereof, and the better to aſcertain the practice for the future,

What affidavit neceſſary of the due execution of a fine.

It is ordered, that, inſtead of an oath made *viva voce* of the due acknowledgment of ſuch fines, an affidavit or affidavits in writing on parchment ſhall be made and annexed to every fine ſo taken as aforeſaid, in which affidavit or affidavits the perſon or perſons making the ſame ſhall ſwear, that he or they knew the party or parties acknowledging ſuch fine, that the ſame was duly ſigned and acknowledged, that the party or parties acknowledging, and alſo the commiſſioners taking the ſame, were all of full age and competent underſtanding; that the femes covert (if any) were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſame, and that the conuſor or conuſors, and every of them knew the ſame to be a fine to paſs his, her or their eſtate or eſtates; which fine, together with ſuch affidavit or affidavits annexed, ſhall be tranſmitted to the ſaid lord chief juſtice, or ſome other juſtice of this court for his *Allocatur* thereon, and ſuch affidavit or affidavits ſhall remain annexed to ſuch fine, and be left with the ſame in the proper office. And it is ordered, that all and every ſuch affidavit and affidavits as aforeſaid, except where the perſon or perſons at the time of their acknowledging the fine are in *Ireland*, or ſome other parts beyond the ſeas, ſhall be made by ſome attorney or attornies of

of the courts of *Weſtminſter-Hall*, or of the great ſeſſions in *Wales*, or of the county palatine of *Cheſter*, *Lancaſter* and *Durham*, and ſhall be ſworn before a perſon duly authoriſed to take affidavits in this court. *Hil.* 17 *Geo.* 2.

The form of an Affidavit of the due caption of a fine.

In the Common Pleas.

A. B. of ——— in the county of ——— one of the attornies of his majeſty's court of———and one of the commiſſioners named in the writ of *Dedimus poteſtatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and ſaith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conuſors named in the ſaid fine, and that the ſame was duly ſigned and acknowledged by them before this deponent and *J. K.* gentleman, the other commiſſioner named in the ſaid writ; and that the ſaid *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and alſo this deponent and the ſaid *J. K.* were at the time of taking and acknowledging the ſaid fine all of full age and competent underſtanding. That the ſaid *E.* and *H.* were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſaid fine, and that the ſaid conuſors, and every of them, knew the ſame to

be a fine to paſs his, her, or their eſtate and eſtates. *A. B.*

Sworn at——in the county of —— the —— day of ——in the year of our lord —— before me

L. M. one of, (&c.)

Or thus, if the affidavit is not made by a commiſſioner.

In the Common Pleas.

A B. of——in the county of——one of the attornies of the court of —— maketh oath and ſaith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conuſors named in the fine hereunto annexed, and that the ſaid fine was duly ſigned and acknowledged by them in this deponent's preſence, and that they the ſaid *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and alſo *J. K.* and *L. M.* gentlemen, the commiſſioners taking the ſame fine, were at the time of taking thereof all of full age, *&c.* as in the former.

If there be only one conuſor and his wife, ſay——and each of them——.

By a rule made *Trin.* 26 *&* 27 *Geo.* 2. reciting the laſt rule of *Hil.* 17 *Geo.* 2. and that the ſame had been found by experience to have anſwered many, but not all the good purpoſes for which it was intended: To make therefore the ſame more effectual and complete, and the better to aſcertain the practice for the future, It

It is ordered that in the affidavit, or affidavits, made in purſuance of ſuch rule, the perſon or perſons, ſo making the ſame, ſhall not only ſwear as they are directed by the ſaid rule, but alſo that the fine was duly ſigned and acknowledged, upon the day and year, or days and years, mentioned in the caption; and, if there be any razure or interlineation in the body or caption of ſuch fine, that ſuch razure or interlineation was made before the party or parties ſigned the ſaid fine, and before the caption was ſigned by the commiſſioners: Which affidavit, or affidavits, ſhall be annexed to the fine, and ſhall be tranſmitted to the ſaid lord chief juſtice, or ſome other juſtice of this court, for his *Allocatur* thereon, and ſhall remain annexed to ſuch fine, and be left with the ſame in the proper office, as is directed by the ſaid rule. *Further rule thereon.*

An addition to be made to the former affidavit.

AND this deponent further ſaith, that the ſaid fine was duly ſigned and acknowledged, upon the day and year mentioned in the caption, (or upon the ſeveral days and year, or years, reſpectively mentioned in the captions, if there happens to be more captions than one;) and that the razure or interlineation (razures, or interlineations) in the body (or in the caption, or captions) of ſuch fine (*as the caſe ſhall happen*)

pen) was (or were) made before the party (or parties) ſigned the ſaid fine, and before the caption (or captions) was (or were) ſigned by the commiſſioners.

Fine paſſed on affidavit by a tradeſman.

A fine was taken before *Prentice* an attorney, and *Prentice* a tradeſman as commiſſioners; *Prentice* the attorney died without having made an affidavit of the acknowledgment of the fine. One of the cognizors became bankrupt, abſconded, and did not ſurrender within the time limited by the ſtatute. Ordered that the fine ſhould paſs on affidavit of the due acknowledgment thereof by *Prentice* the tradeſman. *Trin.* 27, 28 *Geo.* 2. *Say* againſt *Smith* and others.

Death of one of the cognizors before king's ſilver entered, but no Caveat *till after.*

Writ of covenant teſted firſt day of *Eaſter* term, *viz.* 1 *May* 1754.

Fine taken by *De. po.* 13 *May.*

Writ of covenant returnable 19 *May.*

Compounded and prefine paid between 17 & 20 *May.*

Mary Nunn one of the cognizors died 27 *May.*

After paſſing the return, warrant of attorney and *Cuſtos brevium* offices, the writ was brought to the king's ſilver office on 11 *June*, and the clerk there then entered the king's ſilver or poſt-fine in his book, and on the writ of covenant.

A *Caveat* to prevent the completing this fine was brought to the king's ſilver office on 13 *June* (before the record was made up in form).

The court utterly exploded the notion, which had prevailed, undoubtedly by miſtake, that

that the king's ſilver is the prefine or fine for licence to alienate; certainly it is not, the king's ſilver is the poſt-fine or fine for licence to accord. 2 *Inſt.* 411. *Dyer* 246. The return of the writ of covenant is agreed to be in the life-time of *Mary* the cogniſor; and from that time the crown has a right to the poſt-fine, which was entered at the king's ſilver office before any *Caveat* againſt it; the making up the record in form is certainly a miniſterial act, not neceſſary to be done previous to the *Caveat*; the entry by the clerk of the king's ſilver as aforeſaid is ſufficient. (2 *Ro. Ab.* 19. *Q. p.* 1. *in point.*) *Paſ.* 28 *Geo.* 2. *Barber* plaintiff againſt *Henry Nunn* and *Mary* his wife and others deforcients.

Fine taken beyond ſea not ſigned by the parties, ordered to paſs.

A fine taken at *Naples* ordered to paſs, though not ſigned by the parties, on affidavit that it was duly acknowledged, that the parties were of full age and good underſtanding; that the feme covert was examined a part from her huſband and freely conſented. The fine being taken beyond ſea is not within the late rule requiring an affidavit, and the ſigning a fine by the cogniſors is not an eſſential part. By *Willes*, ch. juſt. and *Clive* juſt. 27 *February* 1756. *Fleetwood* plaintiff, *Calenda* and wife and others deforcients.

A fine from three conuſors and the wives of two of them, to two conuſees, upon two writs of covenant. 1. *Of meſuages, cotages, barns, ſtables, gardens, orchards, land, meadow, paſture, wood, common of paſture, and free fiſhery.* 2. *Of meſuages, cotages, barns, ſtables, gardens, orchards, land, meadow, paſture, wood, furze and heath.*

Norfolk, *to wit*, COmmand *A. B.* gent. and *C.* his wife, *D. E.* gent. and *F.* his wife, and *G. H.* gent. that they juſtly, *&c.* perform to *J. K.* eſq; and *L. M.* gent. the covenant made between them of four meſuages, ſix cotages, four barns, ſix ſtables, ſix gardens, ſix orchards, four hundred acres of land, four hundred acres of meadow, four hundred acres of paſture, forty acres of wood, common of paſture for all cattle, and free fiſhery with the appurtenances in *N. O.* and *P.* And unleſs, *&c.*

Suffolk, *to wit*, *Command* the ſame that they juſtly, *&c.* perform to the ſame the covenant made between them of ſix meſuages, four cotages, five barns, ſix ſtables, ſix gardens, ſix orchards, four hundred acres of land, two hundred acres of meadow, two hundred acres of paſture, thirty acres of wood, and forty acres of furze and heath, with the appurtenances in *Q. R. &c.* and unleſs, *&c.*

And the agreement is ſuch, *to wit*, that the aforeſaid *A.* and *C. D.* and *F.* and *G.*

G. have acknowledged the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances to be the right of the ſaid *J.* as thoſe which the ſaid *J.* and *L.* have of the gift of the ſaid *A.* and *C. D.* and *F.* and *G.* and thoſe they have remiſed and quit-claimed from themſelves the ſaid *A.* and *C. D.* and *F.* and *G.* and their heirs to the ſaid *J.* and *L.* and the heirs of the ſaid *J.* for ever. *And moreover*, the ſaid *A.* and *C.* have granted from themſelves and the heirs of the ſaid *C.* that they will warrant to the ſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances, againſt them the ſaid *A.* and *C.* and the heirs of the ſaid *C.* for ever. *And further* the ſaid *D.* and *F.* have granted for themſelves and the heirs of the ſaid *F.* that they will warrant to the aforeſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances againſt them the ſaid *D.* and *F.* and the heirs of the ſaid *F.* for ever. *And alſo* the ſaid *G.* hath granted for himſelf and his heirs, that he will warrant to the aforeſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances againſt him the ſaid *G.* and his heirs for ever, and for this, *&c.*

Taken and acknowledged, *&c.* { *A. B.* / *C. B.* / *D. E.* / *F. E.* / *G. H.* }

Recoveries.

Recoveries.

Where the parties appear in proper perſon.

OF ſuffering a recovery where the tenant and vouchees appear in perſon.

You prepare a *Præcipe* on paper, according to the nature of your caſe, in this manner:

Cooke.

Eaſter *term in the twenty-ninth year of the reign of king* George *the ſecond.*

Eſſex, *to wit.* COmmand *R. R.* gentleman, that he juſtly, *&c.* render to *S. R.* three meſuages, and twenty-four acres of land *(ſpecifying the parcels)* with the appurtenances in *D.* which he claimeth, *&c.*

Tenant in perſon voucheth to warrant *S. F.* who in perſon voucheth to warrant *Edmund Wilſon.*

If there be more vouchees, name them in order, naming *Edmund Wilſon*, who is the common vouchee, laſt.

Then you go with the tenant and vouchee, or vouchees (except the common vouchee) to *Weſtminſter*, and give the *Præcipe* to a ſerjeant's clerk who will get it paſſed at bar, and deliver it back to you.

If

If the recovery be with ſingle voucher, you pay the ſerjeant's clerk 6*s.* with double voucher 8*s.* with treble voucher 10*s.* with quadruple voucher 12*s.* and if by warrant of attorney 4*s.* more. There are other fees in court amounting to about 5*s.* more, if by warrant of attorney, to 6*s.* but you may give thoſe fees to the ſerjeant's clerk who will pay them for you.

You then make a copy of the *Præcipe* for the curſitor to make out the writ of entry in the following form.

Eſſex, *to wit*, Command *R. R.* gentleman, that he juſtly, *&c.* render to *S. R.* three meſuages and twenty-four acres of land, with the appurtenances in *D.* which he claimeth, *&c.*

Returnable from Eaſter *day in* 15 *days.*

You pay for the writ of entry 7*s.* 6*d.* and then get the attorney general's hand to it, for which you pay 10*s.* (this is frequently done laſt of all); you then go to the alienation office in the *Temple*, and compound for the fine, which for ſuch ſmall parcels as above is generally 6*s.* 8*d.* which you pay with the clerk's fee, generally about 2*s.* or 2*s.* 6*d.*

You then make out a writ of ſeiſin, for the form of which *vide poſtea*, and having got it ſigned by the prothonotary and ſealed, you carry that and the writ of entry to the return office, at Mr. *Prothonotary Wegg*'s of-

fice in the *Temple*, to be returned; for the return of each you pay 1 *s.* 6 *d.*

You then prepare a draught of your recovery in the form after mentioned, and getting a roll from the prothonotary's office enter it thereon in an ingroſſing hand.

Then the exemplification is to be ingroſſed in an exemplifying hand in the form hereafter mentioned, on a ſkin of parchment, with a double five ſhillings ſtamp. Then go to the prothonotary's office, taking with you the roll, exemplification, writs, and *Præcipe* paſſed at bar, docket the roll, enter the *Præcipe* on the remembrance roll, according to the forms you'l ſee there, and one of the prothonotary's clerks will examine the writs, entries and exemplification; you pay him the fees, which are different according to the nature of the caſe; he then ſigns the exemplification, which you then get ſealed.

The form of the recovery as entered on the roll.

Entry returnable from Eaſter *day in* 15 *days.*

Eſſex, *to wit*, S. *R.* gentleman, in his proper perſon demandeth againſt *R. R.* gentleman, three meſuages and twenty-four acres of land with the appurtenances in *D.* as his right and inheritance, and into which the ſame *R.* hath not entry but after the diſſeiſin which *Hugh Hunt* thereof unjuſtly, and without judgment hath made to the ſaid S within thirty years, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid

aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the aforeſaid *R.* in his proper perſon cometh and defendeth his right, when, *&c.* and thereupon voucheth to warrant *S. F.* who is preſent here in court in her proper perſon, and freely warranteth the tenements aforeſaid, with the appurtenances, to the ſaid *R. &c.* and hereupon the ſaid *S.* demandeth againſt the ſaid *S.* tenant by her own warranty the tenements aforeſaid, with the appurtenances in manner aforeſaid, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances in his demeſne, as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *S.* tenant by her own warranty, defendeth her right, when, *&c.* and thereupon ſhe further voucheth to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to her the tenements aforeſaid with the appurtenances, *&c.* and hereupon the ſaid *S.* demandeth againſt him the ſaid *Edmund* tenant by his own warranty the tenements aforeſaid, with the appurtenances in manner aforeſaid, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid,

with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth ſuit, &c.

And the ſaid *Edmund*, tenant by his own warranty defendeth his right, when, &c. and ſaith, that the ſaid *Hugh* did not diſſeiſe the ſaid *S.* of the tenements aforeſaid with the appurtenances, as the ſaid *S.* by his writ and declaration above doth ſuppoſe; and of this he putteth himſelf upon the country, &c.

And the ſaid *S.* thereupon craveth leave to imparle, and he hath it, &c. and afterwards the ſaid *S.* cometh again here into court in this ſame term in his proper perſon, and the ſaid *Edmund* although ſolemnly called cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered, that the ſaid *S.* recover his ſeiſin againſt the ſaid *R.* of the tenements aforeſaid with the appurtenances, and that the ſaid *R.* have of the land of the ſaid *S.* to the value, &c. and furthermore that the ſaid *S.* have the land of the ſaid *Edmund* to the value, &c. and the ſaid *Edmund* in mercy, &c. and hereupon the ſaid *S.* prayeth a writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements aforeſaid with the appurtenances to be delivered to him, and it is granted to him returnable here on the morrow of the aſcenſion

ſcenſion of our lord; at which day the ſaid
S. cometh here into court in his proper
erſon, and the ſheriff namely *E. E.* eſq;
ow returneth, that he by virtue of the
foreſaid writ to him directed on the twen-
y-ſecond day of *May* in this ſame term did
auſe full ſeiſin of the tenements aforeſaid
ith the appurtenances, to be delivered to
e aforeſaid *S.* as by the ſaid writ he was
mmanded, *&c.*

Exemplification of the above recovery.

GEORGE the ſecond, by the grace of
God, of *Great Britain*, *France* and *Ire-*
nd king, defender of the faith, *&c.* To
to whom theſe our preſent letters ſhall
me greeting. Know ye that amongſt the
eas of land inrolled at *Weſtminſter*, before
John Willes, knight, and his brethren
juſtices of the bench of the term of
ſter in the twenty-ninth year of our reign,
on the ſeventh roll it is thus contained: En-
returnable [*the whole of the above entry to*
words] Commanded, *&c.* All and ſingular
ich premiſſes at the requeſt of the ſaid *S.*
the tenor of theſe preſents we have com-
nded to be exemplified; in teſtimony
ereof, we have cauſed our ſeal appointed
ſealing of writs in the bench aforeſaid
be affixed to theſe preſents. Witneſs Sir
n Willes, knight, at *Weſtminſter*, the
nty-firſt day of *May* in the twenty-ninth
of our reign.

Cooke.

Of recoveries where ſome of the parties appear by attorney.

To prevent the expence and delay of a *Dedimus* for the tenant, when he lives at diſtance from *Weſtminſter*, generally ſome perſon in *London* is made tenant to the *Præcipe*; therefore there being ſeldom a *Dedimus* for the tenant, and this being intended as a ſhort treatiſe of the moſt uſual matters in recoveries, and not of all it's branches, I ſhall proceed to recoveries where the vouchee appears by attorney.

Prepare a *Præcipe* for the curſitor to make out the *Dedimus poteſtatem*, according to the nature of your caſe, in the following form.

Shropſhire, *to wit*, Command *A. B.* gentleman, that he juſtly, *&c.* render to *R. R.* gentleman, twenty meſuages, ten gardens, two hundred acres of land, one hundred acres of meadow, one hundred acres of paſture, fifty acres of wood, fifty acres of furze and heath, common of paſture for all manner of cattle, fairs, markets, tolls, ſtallage and pickage, with the appurtenances in *L. B. C.* and *L.* which he claimeth, *&c.*

The tenant in perſon voucheth to warrant *R. W.* eſq; and *W. W.* gent. (whereupon ſummons returnable from the day of St. *Martin* in fifteen days) who by attorney vouch to warrant *Edmund Wilſon.*

De po. to——— Sir *J. B.* knt. *G. M.* *T. M.* gent.

You pay the curſitor for this writ. 1 5

Th

The warrant of attorney is to be ingroſſed on parchment thus:

Shropſhire, *to wit*, *R. W.* eſquire, and *W. W.* gentleman, whom *A. B.* gentleman, hath vouched to warrant, put in their place *J. S.* and *E. C.* their attornies, jointly and ſeverally againſt *R. R.* gentleman, of a plea of land, *&c.*

Taken and acknowledged the day of in the twenty-fifth year of the reign of king *George* the ſecond, before.

The vouchees are to ſign and acknowledge the warrant of attorney, in the preſence of any two of the commiſſioners who are to ſign the caption, and alſo an indorſement on the back of the *Dedimus* in theſe words, *viz.* *The execution of this commiſſion appeareth in a certain ſchedule to this commiſſion annexed.*

When the *Dedimus* is returned, you carry it to the curſitor who will make out a *Mittimus* and tranſcript, and alſo the writ of entry.

In the mean time you make out the writs of ſummons and ſeiſin in the manner herein after directed, which are to be ſigned by the prothonotary and then ſealed.

You alſo get the recovery paſſed at bar (which may regularly be done any day after the return of the writ of ſummons, as to which *vide poſtea*) and for that purpoſe you

write the *Præcipe* on paper in the ſame manner, as before directed for the *Dedimus*, only adding the term, and prothonotary's name at the top; you attend with the tenant at *Weſtminſter*, and deliver the *Præcipe* to a ſerjeant's clerk, who will get it paſſed for you, as before is mentioned.

You get the writ of entry ſigned by the attorney general, (though that is often done laſt of all,) compound for the fine at the alienation-office, and get the writs of entry, ſummons and ſeiſin, returned in manner before directed.

You then prepare your entries, which in this caſe are two, the forms of which follow; the firſt of which is called the ſummons roll, and is to be wrote in an ingroſſing; the ſecond, called the recovery roll, begins with the *Mittimus* and tranſcript, which is to be wrote in a ſmaller hand, and the reſt of that roll in an ingroſſing hand; theſe rolls you have from the prothonotary.

You then prepare and ingroſs the exemplification, the form of which you will find amongſt the following precedents; and then paſs the whole at the prothonotary's office, in manner before directed.

The firſt, or ſummons roll.

To be wrote in an ingroſſing hand.

Shropſhire, *to wit*, R. *R.* gentleman, in his proper perſon, demandeth againſt *A. B.* gentleman, twenty meſuages [*the parcels as before*] with the appurtenances in *B. L. B. C.* and *L.* as his right and inheritance, and into

into which the ſame *A.* hath not entry, but after the diſſeiſin, which *Hugh Hunt* thereof unjuſtly, and without judgment, hath made to the ſaid *R.* within thirty years, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in his demeſne, as of fee and right in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, *&c.* And into which, *&c.* And thereof he bringeth ſuit, *&c.*

And the ſaid *A.* in his proper perſon, cometh and defendeth his right when, *&c.* And thereupon voucheth to warrant *R. W.* eſquire, and *W. W.* gentleman, ſummoned in the county aforeſaid, and let him have them here, from the day of ſaint *Martin* in fifteen days, by the aid of the court, *&c.* The ſame day is given here to the parties aforeſaid, *&c.* And upon this the ſaid *A.* putteth in his place *J. W.* and *T. B.* his attornies, jointly and ſeverally, againſt the ſaid *R. R.* to gain or loſe in the plea aforeſaid, *&c.*

The ſecond roll.

OUR lord the king ſent to his juſtices of the bench here his writ of *Mittimus* cloſed, together with the tenor of a certain writ of our ſaid lord the king of *Dedimus poteſtatem*, for the receiving a warrant of attorney, and the return of the ſame; and alſo the warrant of attorney thereupon received, in theſe words: *To be wrote in a ſmaller hand.*

GEORGE the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To his juſtices of the bench, greeting. We ſend you, incloſed in theſe preſents, the tenors of our certain writ of *Dedimus poteſtatem*, directed to our truſty and well beloved Sir *J. B.* knight, and to our beloved *G. M.* and *T. M.* gentlemen, for and concerning the receiving the attorney or attornies, jointly or ſeverally, whom or who *R. W.* eſquire, and *W. W.* gentleman, will appoint or conſtitute in their ſtead, before the aforeſaid Sir *J. G.* and *T.* or two of them, againſt *R. R.* gentleman, to gain or loſe in a plea of land upon our writ of entry upon diſſeiſin *in le poſt*, depending before you, between the aforeſaid *R. R.* and *A. B.* gentlemen, concerning twenty meſuages, *&c.* [*naming all the parcels as before*,] with the appurtenances, in *B. L. B. C.* and *L.* in *Shropſhire*; which ſame *A.* hath vouched the ſame *R. W.* and *W.* to warrant to him the meſuages aforeſaid, and other the premiſſes with the appurtenances; alſo the return of the ſame writ of *Dedimus poteſtatem*; and likewiſe a warrant of attorney received in that behalf ſent into our *Chancery*, and remaining on the files of the ſame *Chancery*, commanding you, that inſpecting the ſaid tenors, you cauſe farther to be done therein at the proſecution of the ſaid *R. R.* what of right, and according to the law and cuſtom of *England*, ſhall be meet to be done. Witneſs ourſelf at *Weſtminſter* the twenty-

firſt

firſt day of *November* in the twenty-fifth year of our reign. *Sykes. George* the ſecond, by the grace of god, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To his truſty and well beloved Sir *J. B.* knight, and to his beloved *G. M.* and *T. M.* gentlemen, greeting. Whereas our writ of entry upon diſſeiſin *in le poſt* is depending before our juſtices of the bench, between *R. R.* gentleman, and *A. B.* gentleman, concerning twenty meſuages, *&c.* [*all the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* in *Shropſhire*; and the ſaid *A.* appearing in our full court before our juſtices aforeſaid, hath vouched *R. W.* eſquire, and *W. W.* gentleman, to warrant to him the meſuages aforeſaid, and other the premiſſes, with the appurtenances: Whereupon our writ of ſummons to warrant hath iſſued forth againſt the ſaid *R. W.* and *W.* returnable before our juſtices aforeſaid, from the day of ſaint *Martin* in fifteen days. And foraſmuch as the ſaid *R. W.* and *W.* are ſo infirm, that they cannot, without the greateſt bodily danger, travel to *Weſtminſter* at the day in our ſaid writ of ſummons to warrant contained, to do and act thoſe things which then and there ſhall be expedient to be done in the ſame, as we are informed; we, tendering the condition of the ſaid *R. W.* and *W.* in this behalf, have given to you, or two of you, power and authority to receive the attorney or attornies jointly or ſeverally,

whom or who the ſaid *R. W.* and *W.* before you or two of you, will appoint or conſtitute in their ſtead, to gain or loſe in the ſaid plea before our ſaid juſtices: And therefore we command you, or two of you, that you go in perſon unto the ſaid *R. W.* and *W.* if they cannot conveniently travel to you, and receive their attorney or attornies, jointly or ſeverally, in form aforeſaid; and when you ſhall have received the ſaid attorney or attornies, you diſtinctly and plainly, without delay, certify us in our *Chancery* under your ſeals, or the ſeals of two of you, of the name or names of ſuch attorney or attornies, ſending back unto us this writ. Witneſs ourſelf at *Weſtminſter*, the fourth day of *November* in the twenty-fifth year of our reign. *Sykes.* By the lord chancellor of *Great Britain*, at the inſtance of the demandant *H.* C. J. *Willes.* The execution of this commiſſion appears in a certain ſchedule to this commiſſion annexed. *G. M. T. M.* Received 6 *s.* 8 *d.* *R. Salkeld.* Shropſhire, *to wit*, *R. W.* eſquire, and *W. W.* gentleman, whom *A. B.* gentleman, vouched to warrant, put in their place *J. Sharpe* and *E. C.* their attornies, jointly and ſeverally againſt *R. R.* gentleman, of a plea of land, *&c. R. W. W. W.* Taken and acknowledged the eighteenth day of *November* in the twenty-fifth year of the reign of king *George* the ſecond, before *G. M. T. M.*

Ingroſſing band.

Elſewhere, as it appeareth of this ſame term upon the 421ſt roll, it is thus contained:

Shropſhire, *to wit*, *R. R.* gentleman, in his proper perſon, demandeth againſt *A. B.* gentleman, twenty meſuages, *&c.* [*naming the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* as his right and inheritance; and into which the ſame *A.* hath not entry, but after the diſſeiſin which *Hugh Hunt* thereof unjuſtly, and without judgment, hath made to the ſaid *R.* within thirty years, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *A.* in his proper perſon, cometh and defendeth his right when, *&c.* and thereupon voucheth to warrant *R. W.* eſquire, and *W. W.* gentleman, ſummoned in the county aforeſaid; let him have them here from the day of ſaint *Martin* in fifteen days, by the aid of the court, *&c.* The ſame day is given here to the parties aforeſaid, *&c.* And upon this the ſaid *A.* putteth in his place *J. W.* and *T. B.* his attornies jointly and ſeverally, againſt the ſaid *R. R.* to gain or loſe in the plea aforeſaid, *&c.* At which day here cometh as well the ſaid *R. R.* in his proper perſon, as the ſaid *A. by the ſaid J. W.* his attorney. And the ſaid *R. W.* and *W.* being ſummoned, *&c.* likewiſe come by *J. S.* their attorney, and freely warrant the tene-

tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, to the ſaid *A. &c.* And hereupon the ſaid *R. R.* demandeth againſt the ſaid *R. W.* and *W.* tenants by their own warranty, the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in manner aforeſaid, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *R. W.* and *W.* tenants by their own warranty defend their right when, *&c.* and thereupon they further vouch to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to them the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, *&c.* And hereupon the ſaid *R. R.* demandeth againſt him the ſaid *Edmund*, tenant by his own warranty, the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in manner aforeſaid, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances in his demeſne as of fee

ſee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *Edmund* tenant by his own warranty defendeth his right when, *&c.* and ſaith, that the ſaid *H.* did not diſſeiſe the ſaid *R. R.* of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, as the ſaid *R. R.* by his writ and declaration above doth ſuppoſe: And of this he putteth himſelf upon the country, *&c.*

And the ſaid *R. R.* thereupon craveth leave to imparle, and he hath it, *&c.* And afterwards the ſaid *R. R.* cometh again here into court in this ſame term, in his proper perſon; and the ſaid *Edmund* although ſolemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered, that the ſaid *R. R.* recover his ſeiſin againſt the ſaid *A.* of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances; and that the ſaid *A.* have of the land of the aforeſaid *R. W.* and *W.* to the value, *&c.* And furthermore, that the ſaid *R. W.* and *W.* have of the land of the ſaid *E.* to the value, *&c.* And the ſaid *Edmund* in mercy, *&c.* And hereupon the ſaid *R. R.* prayeth a writ of our lord the king, to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements, common,

common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, to be delivered to him; and it is granted to him returnable here in eight days of ſaint *Hilary:* At which day the ſaid *R. R.* cometh here into court in his proper perſon; and the ſheriff, namely Sir *R. A.* baronet, now returneth, that he, by virtue of the aforeſaid writ to him directed on the ſixth day of *December* laſt, did cauſe full ſeiſin of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, to be delivered to the aforeſaid *R. R.* as by the ſaid writ he was commanded, *&c.*

The

The exemplification of a recovery, where the tenant appears in perſon, and the vouchee on ſummons.

GEORGE *the ſecond, by the grace of God, of* Great Britain, France *and* Ireland *king, defender of the faith,* &c. *To all, to whom theſe our preſent letters ſhall come, greeting. Know ye that amongſt the pleas of land inrolled at* Weſtminſter, *before Sir* Robert Eyre, *knight, and his brethren, our juſtices of the bench of the term of* Eaſter *in the* ſixth *year of our reign, upon the* forty ſecond *roll, it is thus contained*; Elſewhere as it appears in the term of Saint *Hilary* laſt paſt, upon the *three hundredth and third* roll, it is thus contained *:

The recovery as entered on the roll, the exemplification being without paragraphs.

Somerſetſhire, *ſſ. A. B. (the demandant)* in his proper perſon demandeth againſt *C. D. (the tenant)* one meſuage [*reciting the parcels*] with the appurtenances in *D.* as his right and inheritance, and into which the ſame *C.* hath not entry but after the *Diſſeiſin*, which *Hugh Hunt* thereof unjuſtly and without judgment hath made to the ſaid *A.* within thirty years, *&c.* and whereupon he ſaith that he was ſeiſed of the tenements aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now

* When vouchee appears at bar, inſert the return of the writ of entry, thus: "Entry returnable in 15 days of ſaint *Martin*."

is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth ſuit, &c.

And the ſaid *C.* in his proper perſon cometh and defendeth his right when, &c. and thereupon voucheth to * warrant *W. W.* and *M.* his wife, ſummoned in the county aforeſaid, let him have them here *from* Eaſter-*day in five weeks*, by the aid of the court, &c. the ſame day is given here to the parties aforeſaid, &c. And upon this the ſaid *C.* putteth in his place *G. H.* and *J. K.* his attornies jointly and ſeverally, againſt the ſaid *A.* to gain or loſe of the plea aforeſaid, &c. at which day here cometh, as well the ſaid *A.* in his proper perſon, as the ſaid *C.* by the ſaid *G. H.* his attorney, and the ſaid *W.* and *M.* being ſummoned, &c. likewiſe come by *T. T.* their attorney, and freely warrant the tenements aforeſaid, with the appurtenances to the ſaid *C.* &c. And hereupon the ſaid *A.* demandeth againſt the aforeſaid *W.* and *M.* tenants by their own warranty, the tenements aforeſaid, with the appurtenances, in manner aforeſaid, &c. and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth ſuit, &c.

And the ſaid *W.* and *M.* tenants by their own warranty, defend their right when, &c. and thereupon they further vouch to warrant *Edmund*

* *If there be no ſummons, then ſay* voucheth to warranty *W. W.* (*the vouchee*) who is preſent here in court in his proper perſon, and freely warranteth the tenements aforeſaid, with the appurtenances to the ſaid *C.* &c. and hereupon the ſaid *A.*—

Edmund Wilſon who is preſent here in court in his proper perſon, and freely warranteth to them the tenements aforeſaid, with the appurtenances, *&c.* And hereupon the ſaid *A.* demandeth againſt him the ſaid *Edmund*, tenant by his own warranty, the tenements aforeſaid with the appurtenances, in manner aforeſaid, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances in his demeſne, as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *Edmund* tenant by his own warranty defendeth his right when, *&c.* and ſaith that the ſaid *Hugh* did not diſſeiſe the ſaid *A.* of the tenements aforeſaid, with the appurtenances, as the ſaid *A.* by his writ and declaration above doth ſuppoſe; and of this he putteth himſelf upon the country, *&c.*

And the ſaid *A.* thereupon craveth leave to imparle, and he hath it, *&c.* and afterwards the ſaid *A.* cometh again here into court in this ſame term in his proper perſon, and the ſaid *Edmund*, although ſolemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered that the ſaid *A.* recover his ſeiſin againſt the ſaid *C.* of the tenements aforeſaid, with the appurtenances; and that the ſaid *C.* have of the land of the aforeſaid *W.* and *M.* to the value, *&c.* And furthermore, that the ſaid *W.* and *M.* have

of the land of the ſaid *Edmund*, to the value, *&c.* and the ſaid *Edmund* in mercy, *&c.* And hereupon the ſaid *A.* prays a writ of the lord the king, to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements aforeſaid, with the appurtenances to be delivered to him, and it is granted to him, returnable here * forthwith, *&c.* Afterward, that is to ſay, the ſeventh day of *May* in this ſame term, the ſaid *A.* cometh here into court in his proper perſon, and the ſheriff, namely, *R. S.* eſquire, now returneth, that he by virtue of the aforeſaid *writ to him directed*, on the † *fifth* day of the

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* *Or*, returnable here in *three weeks from* Michaelmas *day (or as the return is)* at which day the ſaid *A.* cometh here—

Note; you may get ready your writ of ſeiſin, and ſeal it, and return it with your writ of entry. The writ of ſeiſin ought to be made returnable at leaſt 15 days after the teſte day of the return of the writ of entry; but if the writ of entry be returnable towards the latter end of the term, ſo that there are not 15 days between the return of the writ of entry and the laſt return of the term, then the writ of ſeiſin muſt always be made *(returnable indilate)* and the writ of ſeiſin muſt always bear *Teſte* the teſte-day of the return of the writ of entry, when there is no ſummons. But if the writ of entry be made returnable the laſt return of the term, then the writ of ſeiſin muſt be returnable the firſt return of the ſubſequent term.

† You may ſuppoſe ſeiſin to be delivered any reaſonable time (ſo it be not on a *Sunday*) between the *Teſte* und return, allowing that a man might ride from *Weſtminſter* to the land, and back again by that time which may be ſuppoſed to be done in ſix days, in any part of *England*.

farm

ſame month of *May*, did cauſe full ſeiſin of the tenements aforeſaid, with the appurtenances, to be delivered to the aforeſaid *A.* as by the ſaid writ he was commanded, *&c.* All and ſingular which premiſſes, at the requeſt of the ſaid *A.* by the tenor of theſe preſents, we have commanded to be exemplified, in teſtimony whereof, we have cauſed our ſeal, appointed for ſealing of writs in the bench aforeſaid, to be affixed to theſe preſents. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the * *ſeventh* day of *May*, in the —— year of our reign.

Thus far as on the roll.

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* To the ſheriff of *S.* greeting. Summon by good ſummoners (*the vouchee*) that he be before

The writ of ſummons for the firſt vouchee.

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* You muſt teſte your exemplification after the return of the writ of ſeiſin, if ſuch writ be returnable in the ſame term in which judgment was given; but if the writ of ſeiſin be returnable of a ſubſequent term, then you *Teſte* your exemplification the laſt day of the term in which judgment was given. And obſerve that immediately after the awarding the *return* of the writ of ſeiſin, you go on in the exemplification, *All and ſingular which premiſes* [&c. as in the foregoing,] and then upon the folding up of the bottom of the exemplification you indorſe the return of the ſheriff thus, —— *At which day the ſaid* A. B. *cometh here into court in his proper perſon, and the ſheriff namely* R. S. *eſquire, now returneth* [&c. as before] But on the roll you make no ſuch diſtinction.

our juſtices at *Weſtminſter* (*the return* *) to warrant to (*the tenant*) one meſuage and ten acres of land, with the appurtenances in *D.* which (*the demandant*) in our court before our juſtices at *Weſtminſter* claimeth as his right by our writ of entry upon diſſeiſin in *le poſt* againſt the ſaid (*the tenant*) and whereof the ſaid (*the tenant*) in our ſaid court, hath vouched the ſaid (*the vouchee*) to be ſummoned in your county, to warrant againſt the ſaid (*the demandant*) and have then there the ſummoners and this writ. Witneſs Sir *John Willes*, knight, at *Weſtminſter*, the † —— day of —— in the —— year of our reign.

Summons for the ſecond vouchee.

GEORGE the ſecond [*&c.*] to the ſheriff of *S.* greeting. Summon by good ſummoners (*the ſecond vouchee*) that he be before our juſtices at *Weſtminſter* (*the fourth*

* There were formerly nine returns, between the return of the writ of *Entry* and return of the writ of *Summons*, and ſo betwixt one writ of ſummons and another; but by the *Statute* 17 *Car.* 2. *cap.* 6. they are abridged to five returns incluſive. And by the *Statute* 24 *Geo.* 2. *c.* 48. to four returns incluſive. For example, if the writ of entry be returnable, on the morrow of *All Souls day*, then the writ of ſummons muſt be returnable, *in fifteen days from the day of St.* Martin, accounting the return of the writ of entry for one, and then the fourth return is the ſummons: And ſo it is betwixt one ſummons and another.

† The firſt writ of ſummons muſt bear teſte the fourth day incluſive from the return of the writ of entry, and ſo a ſecond ſummons from the return of the firſt.

return

return from the first summons inclusive) to warrant to (*the first vouchee*) (whom (*the tenant*) in our court before our said justices at *Westminster*, heretofore did vouch to warrant) one messuage (*reciting the parcels*) which (*the demandant*) in our said court claimeth as his right by our writ of entry upon disseisin in *le post* against the said (*the tenant*) and whereupon the said (*the first vouchee*) in our said court hath further vouched the said (*the second vouchee*) to be summoned in your county, to warrant against the said (*the demandant*) and have then there the summoners and this writ. Witness Sir *John Willes*, knight, at *Westminster*, the —— day of —— (*Teste the appearance day of the return of the first summons*) in the —— year of our reign.

The writ of seisin.

GEORGE the second [*&c.*] to the sheriff of — greeting. Know you that (*the demandant*) in our court before our justices at *Westminster*, hath recovered his seisin against (*the tenant*) of one messuage (*reciting the parcels*) by our writ of entry upon disseisin in *le post*; and therefore we command you that without delay you cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to the said (*the demandant*) and in what manner you shall have executed this our command, that you make appear to our justices at *Westminster* * forth-

* Returnable immediately, because not 15 days in the term from the teste, the teste being the fourth day inclusive from the return of the second summons, if it be not *Sunday*.

with, and that you have then there this writ. Witneſs (*&c.*)

The return. You return this yourſelf.

By virtue of this writ to me directed on the * —— day of —— in the year within written, I cauſed full ſeiſin of the tenements within ſpecified, with the appurtenances, to be delivered to the within named (*the demandant*) as within I am commanded.
T. T. eſquire, ſheriff.

If the recovery be with a treble voucher, you enter it as before to,

A recovery with treble vouchers.

—— And the ſaid *W.* and *M.* (*his wife*) tenants by their own warranty defend their right when, *&c.* and thereupon they further vouch to warrant *J. S. gentleman*, (*the ſecond vouchee*) ſummoned in the county aforeſaid; let them have him here (*the return*) by the aid of the court, *&c.* the ſame day is given here, as well to the ſaid *A.* and *C.* as to the ſaid *W.* and *M.* tenants by their warranty, *&c.* At which day come here as well the ſaid *A. B.* in his proper perſon, as the ſaid *C. D.* and the ſaid *W. W.* and *M.* (*his wife*) by their attorney aforeſaid: And the ſaid *J. S.* being ſummoned, *&c.* cometh likewiſe by *K. L.* his attorney, and freely warrants the tenements aforeſaid, with the appurtenances, to the ſaid *W.* and *M. &c.* and thereupon the ſaid *A.* demandeth againſt the ſaid *J.*

* Any reaſonable day between the teſte and return.

(*who*

(*who vouches the common vouchee as* W. W. &c. *the first vouchee did in the former, and so proceed till you come to the judgment*) and that the said *C.* have of the land of the said *W.* and *M.* to the value, *&c.* and further, that the said *W.* and *M. &c.* have of the land of the said *J.* to the value, *&c.* and furthermore, that the said *J.* have of the land of the said *Edmund*, to the value, *&c.* and the said *Edmund* in mercy, *&c.* and hereupon the said *A.* — (*as in the former.*)

Precedents of declarations, &c.

Hampshire, *to wit*, *J. R.* and *E.* his wife, by *W. S.* their attorney, demand against *A. W.* the third part of two messuages and two gardens, with their appurtenances in *Gosport*, as the dower of the said *E.* of the endowment of *A. W.* deceased, her late husband, by writ of our lord the king of dower, whereof she hath nothing, *&c.* *Count in dower.*

And the said *A.* the now defendant, by *R. P.* his attorney, cometh and saith nothing in bar of the said action of the said *J.* and *E.* whereby the said *J.* and *E.* remain against the said *A.* the now defendant thereof undefended. Therefore it is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, their seisin of the third part above demanded, with the appurtenances, to be held by them in severalty *Judgment by Nil dicit.*

ralty by metes and bounds; and nothing of the mercy of the ſaid *A.* the now defendant, becauſe he came the firſt day by ſummons, *&c.* And hereupon the ſaid *J.* and *E.* ſay, that the ſaid *A.* late huſband of the ſaid *E.* died ſeiſed of the tenements aforeſaid, with their appurtenances in his demeſne as of fee,

Writ of ſeiſin and inquiry awarded.

and pray a writ of the ſaid lord the king to be directed to the ſheriff of the county aforeſaid, as well to give them full ſeiſin of the ſaid third part with the appurtenances, as to inquire of damages, *&c.* And it is granted to them, returnable here, *&c.* [*the return*] At which day here come the ſaid *J.* and *E.* by their ſaid attorney, and the ſheriff, *to wit*, ——— now returneth, that he, by virtue of the ſaid writ to him directed, on the 20th day of *November* laſt paſt, did cauſe full ſeiſin of the third part of the tenements aforeſaid, with the appurtenances (that is to ſay) of one meſuage, *&c.* to hold the ſame to the ſaid *J. R.* and *E.* in ſeveralty by metes and bounds, for and in the name of the whole dowry of the ſaid *E.* of the tenements aforeſaid, with the appurtenances, happening to her by the death of the ſaid *A.* her late huſband, as by the ſaid writ he was commanded, *&c.* The ſame ſheriff here alſo returneth a certain inquiſition taken before him at the houſe of ——— at —— in the ſaid county, the —— day of ——— ——— laſt paſt, by the oath of 12, *&c.* by virtue of the writ aforeſaid taken, by which it is found, that the ſaid *A. W.* deceaſed, late huſband of the ſaid *E.* in the ſaid

ſaid writ named, on the ——— day of ——— in the year of our lord ———, died ſeiſed of and in the tenements aforeſaid, with the appurtenances, in the ſaid writ ſpecified, in his demeſne as of fee, and that the ſaid tenements are of the clear yearly value in all iſſues beyond reprizes of 12 *l.* and that 20 years are elapſed ſince the death of the ſaid *A.* the late huſband, *&c.* and that the ſaid *J.* and *E.* have ſuſtained damages by reaſon of detaining of the dower aboveſaid, beſides their coſts and charges by them laid out about their ſuit in this behalf to 80 *l.* and for thoſe coſts and charges to 40 *s.* Therefore it is conſidered, that the ſaid *J.* and *E.* recover againſt the ſaid *A.* the now defendant, as well the value of the third part of the tenements aforeſaid, with the appurtenances, from the time of the death of her ſaid late huſband, *&c.* (which ſaid value from the time of the death of the ſaid *A.* late the huſband of the ſaid *E.* amounteth to 80 *l.*) as their damages aforeſaid to 82 *l.* by the inquiſition aforeſaid in form aforeſaid found, and alſo 8 *l.* 10 *s.* to the ſaid *J.* and *E.* at their requeſt, for their coſts and charges aforeſaid, by the court here for increaſe adjudged, which ſaid value and damages in the whole amount to ——, *&c.* *Signed 4th* Feb. 1735.

And the ſaid *W.* by *H. B.* who is admitted by the court of the king here to defend in this behalf for the ſaid *W.* who is under the age of 21 years, as the guardian of the ſaid *W.* cometh and ſaith, that from the death of the *Defendant by guardian ſays, he was always ready to render dower.*

the ſaid *J.* late huſband of the ſaid *M.* he hath been always ready, and ſtill is ready to render to the ſaid *M.* her dower, of the ſaid tenements and premiſſes, with the appurtenances, and rendereth the ſame here in court to the ſaid *M.*

Imparlance. And thereupon the ſaid *M.* prayeth leave to imparl here until the morrow of *All Souls*, and ſhe hath it, *&c.* The ſame day is given to the ſaid *W.* here, *&c.* At which day came here the aforeſaid *M.* by her attorney aforeſaid, and the ſaid *W.* by his guardian aforeſaid; and becauſe the ſaid *M.* doth not deny the plea of the ſaid *W.* Therefore it is conſidered, that the ſaid *M.* do recover her ſeiſin againſt the ſaid *W.* of the third part of the tenements aforeſaid, with the appurtenances, and nothing of mercy, becauſe the ſaid *W.* came on the firſt day of the ſummons, *&c.* And hereupon the ſaid *M.* ſaith, that the ſaid *J.* her former huſband, *&c.* died ſeiſed of the tenements aforeſaid, with the appurtenances, whereof, *&c.* in his demeſne, as of fee; and ſhe prayeth a writ of our ſovereign lord the king, to be directed to the ſheriff of the county aforeſaid, as well to cauſe full ſeiſin to be made to her of the ſaid third part of the ſaid tenements with the appurtenances, as alſo to inquire of damages, *&c.* And becauſe by the confeſſion of the ſaid *W.* above it ſeemeth to the court here, that the ſame *W.* from the death of the ſaid *J.* was always ready to render to the ſaid *M.* her dower of the tenements aforeſaid, with the appurtenances, by reaſon whereof the

Judgment.

Writ of ſeiſin and inquiry.

ſaid

ſaid *M.* ought not to recover the value of the third part of thoſe tenements, nor her damages, by occaſion of the detaining her dower aforeſaid, from the time of the death of the ſaid *J.* her ſaid former huſband, until the day of the iſſuing out the ſaid original writ of the ſaid *M.* againſt the ſaid *W. to wit*, from the ſixth day of *February* in the year of our lord 1735. And it ſeemeth to the juſtices here, that the ſaid *M.* ought to recover againſt the ſaid *W.* the value of the third part of the tenements aforeſaid, with the appurtenances, and her damages occaſioned by detaining her dower aforeſaid, from the aforeſaid day of iſſuing out the original writ aforeſaid, if, *&c.* Therefore the ſheriff is commanded, that he cauſe to be made to the ſaid *M.* full ſeiſin of a third part of the tenements aforeſaid, with the appurtenances; and that by the oath of good and lawful men of his bailiwic he diligently inquire, if the ſaid *J.* died ſeiſed of the tenements aforeſaid, with the appurtenances in his demeſne, as of fee-ſimple, or in fee-tail; and if he ſhall ſo find by their inquiſition, then that he inquire upon their oath, how much the tenements aforeſaid are worth by the year in all iſſues above repriſes, according to the juſt value thereof; as alſo what damages the aforeſaid *M.* hath ſuſtained, as well by occaſion of the detaining her dower aforeſaid from the ſaid day of the iſſuing the original writ aforeſaid, beyond the value thereof, as for her expences and coſts by her laid out in this ſuit; and the inquiſition, *&c.*

And

Plea in dower, husband not seised.

And the said *T. A.* by *R. H.* his attorney cometh and saith, that the said *M.* ought not to have her dower of the said tenements, with the appurtenances, by the endowment of the said *J.* her late husband, because he saith, that the said *J.* her late husband, *&c.* neither at the day when he married the said *M.* nor at any time afterwards, was seised of the said tenements, with the appurtenances, whereof, *&c.* of such an estate as he could thereof endow the said *M.* And of this he puts himself upon the country; and the said *M.* doth so likewise, *&c.* Therefore, *&c.*

Debt on a judgment.

Middlesex, *to wit*, *R. D.* late of *London*, carpenter, was summoned to answer unto *L. P.* of a plea, that he render to him 62 *l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from him, *&c.* And whereupon the said *L.* by *J. C.* his attorney, saith, that whereas the said *L.* heretofore, that is to say, in *Easter* term in the 4th year of the reign of his present majesty king *George* the second, in his said majesty's court before Sir *Robert Eyre*, knt. and his companions, then his said majesty's justices of the bench here at *Westminster* in the county of *Middlesex*, by the consideration of the same court recovered against the said *R.* 62 *l.* which were adjudged to the said *L.* in the same court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings then lately made by the said *R.* to the said *L.* as for his costs and charges by him about his

his ſuit in that behalf expended, whereof the ſaid *R.* is convicted, as by the record and proceedings thereof now remaining in his ſaid majeſty's ſaid court here, *to wit*, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, may appear; which ſaid judgment ſtill remaineth in its full ſtrength, force and effect, not reverſed, vacated, annulled, diſcharged or ſatisfied; and the ſaid *L.* hath as yet obtained no ſatisfaction of the aforeſaid judgment, whereby an action hath accrued to the ſaid *L.* to demand and have of the ſaid *R.* the ſaid 62 *l.* yet the ſaid *R.* (altho' often requeſted) hath not yet paid the ſaid 62 *l.* or any part thereof, to the ſaid *L.* but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *L.* 20 *l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court before Sir *Robert Eyre*, knight, and his brethren, his ſaid majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath above alledged: And this he is ready to verify; therefore prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, *&c.* *Plea* Nul tiel record.

And the ſaid *L.* ſaith, that he by any thing before alledged ought not to be barred from having his aforeſaid action maintained againſt *Replication*, Habetur tale record'.

the ſaid *R.* becauſe he ſaith, that there i ſuch a record of recovery againſt him th ſaid *R.* in his ſaid majeſty's court of commo bench here remaining, as by the ſaid decla ration is above alledged; and this he is read to verify by the ſaid record; and he prayeth that the ſaid record may be inſpected and ſee by the juſtices here, *&c.* And becauſe th ſaid *L.* hath not the ſaid record now read here in court, it is told by the ſaid court her to the ſaid *L.* that he have the ſaid recor here on —— The ſame day is given to th ſaid *R.* here, *&c.*

Cooke.

Michaelmas *term in the firſt yea of the reign of king* George t *ſecond.*

Debt by adminiſtrator de bonis non, &c. *on a judgment recovered by teſtator.*

Middleſex, *to wit,* LEWIS *Weſtcombe*, otherwi called *Weſcombe* late of *Roo ley* in the county of *York*, eſq; was ſummone to anſwer *Robert Richardſon*, eſq; admin ſtrator of the goods and chattels, rights an credits which were of *Robert Fairbeard*, eſ deceaſed, at the time of his death, by *An Swinburne*, widow, executrix of the teſt ment of the ſaid *Robert Fairbeard*, unadm niſtered, with his teſtament annexed, of plea, that he render to the ſaid *Robert R chardſon* 602 *l.* 10 *s.* of lawful money *Great Britain*, which he unjuſtly detaine from him; and whereupon the ſaid *Robe Richardſon*, by *Francis Woodhouſe* his atto ney ſaith, that whereas lately, *to wit*, in t

term of St. *Hilary* in the fifth year of the reign of our ſovereign lady *Anne* late queen of *Great Britain*, &c. in the court of our ſaid lady the late queen, before the then juſtices of our ſaid lady the late queen of the bench at *Weſtminſter*, he the ſaid *Robert Fairbeard*, by the conſideration of the ſame court recovered againſt the ſaid *Lewis*, by the name of *Lewis Weſtcome*, late of *Rockley* in the county of *York*, eſq; as well a certain debt of 600 *l.* as 50 *s.* which were adjudged to the ſaid *Robert Fairbeard* for his damages which he had by occaſion of the detaining that debt, whereof the ſaid *Lewis* was convicted, as by the record and proceſs thereof now remaining in the court of our lord the preſent king of the bench at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex* plainly appeareth; and the ſaid *Robert Richardſon* further ſaith, that the ſaid judgment ſtill remaineth in its full force, ſtrength and effect, no ways ſatisfied, reverſed or annulled; and that the ſaid *Robert Fairbeard* in his lifetime, or the ſaid *Anne Swinburne* in her lifetime, or either of them, or he the ſaid *Robert Richardſon* after the death of the ſaid *Anne* (* to which ſaid *Robert Richardſon* adminiſtration

* If an archdeacon commits adminiſtration, it need not be ſhewed by what authority, for he is *Oculus epiſcopi, & de jure ordinario* is to commit adminiſtration. *Cluberton* and *Trudgeon*, *Cro. Jac.* 556. *Style* 54. 1 *Lev.* 193. So if granted by an official. *Cro. Eliz.* 102. 2 *Mod.* 65. By commiſſary. 1 *Lutw.* 9. By chancellor. *Littlet. Rep.* 79, 80. 1 *Leon.* 312. *Hetl.* 68.

miniſtration of the goods and chattels, rights and credits which were of the ſaid *Robert Fairbeard* at the time of his death unadminiſtered by the ſaid *Anne*, after the death of the ſaid *Anne*, *to wit*, on the 20 day of *July* in the year of our lord 1727. at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, was in due manner, (with the teſtament of the

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68. *Per vicarium generalem in ſpiritualibus epiſcopi B. &c.* 1 *Lev.* 312. If granted by dean, it muſt be ſhewed by what authority. *Cro. Eliz.* 791. So if granted by *A. B. Sacræ theologiæ* profeſſor. *Morgan* and *Williams*, *Moor* 367. *Pl.* 504. *Cro. Eliz.* 431. Where granted by archbiſhop, it need not be ſhewed there were *Bona notabilia*. *Woodward* and *Thomſon*, *Cro. El.* 907. Nor need be ſhewed whether as ordinary, or by his prerogative. *Cro. Eliz.* 6. It is ſufficient to ſhew, that the king granted adminiſtration without ſhewing his power, for he hath univerſal juriſdiction. *All.* 53. 1 *Sid.* 302. Though in a declaration the biſhop's authority to grant adminiſtration need not be ſhewed; yet it is otherwiſe in a bar. *Chard* and *Bird*, *Cro. Eliz.* 838. And for this diverſity *vide* 1 *Leon.* 312. *Lit.* 79, 80. 1 *Sid.* 302. *Style* 106, 282. 1 *Lev.* 193.——*Palm.* 97, 98. And a diverſity taken where committed by one that hath a particular juriſdiction within a certain circuit, for there it ought to be ſpecially ſhewed, that he is ordinary of that place; but otherwiſe where committed by an archdeacon who hath epiſcopal juriſdiction, and the power of the biſhop. *Skidmore* and *Winſton*, *Cro. Eliz.* 879. 1 *Sid.* 228, 302. *Style* 54. 1 *Salk.* 38. 4 *Mod.* 133.

If ſhewed that adminiſtration was *debito modo* granted to the plaintiff *per* A. B. *Commiſſarium & officialem peculiaris juriſdictionis de* B. it is well enough without ſhewing he had power to grant adminiſtration, for every peculiar hath an ordinary. *Denham* and *Stephenſon*, *Salk.* 40. *Maſon* and *Hampton*, 4 *Mod.* 133. 1 *Show.* 355. *Comb.* 196. 6 *Mod.* 241.

ſaid

ſaid *Robert Fairbear* annexed) committed by *William*, by divine providence archbiſhop of *Canterbury*) have not, nor hath any one of them ſued out execution againſt the ſaid *Lewis* upon the ſaid judgment for the debt and damages aforeſaid, whereby an action hath accrued to the ſaid *Robert Richardſon*, as adminiſtrator as aforeſaid, to demand and have of the ſaid *Lewis* the ſaid 602 *l.* 10 *s.* *Yet* the ſaid *Lewis*, although often required, *&c.* hath not paid the ſaid 602 *l.* 10 *s.* to the ſaid *Robert Fairbeard* in his life-time, or to the ſaid *Anne Swinburne* after the death of the ſaid *Robert Fairbeard*, or to either of them, or to the ſaid *Robert Richardſon*, after the death of the ſaid *Anne*; but refuſed to pay the ſame to the ſaid *Robert Fairbeard* in his life-time, and to the ſaid *Anne Swinburne* after the death of the ſaid *Robert Fairbeard*, and ſtill refuſeth to pay the ſame to the ſaid *Robert Richardſon*, and unjuſtly detaineth, in delay of the adminiſtration of the goods and chattels, rights and credits of the ſaid *Robert Fairbeard* unadminiſtered by the ſaid *Anne Swinburne* in her life-time, and to the damage of the ſaid *Robert Richardſon* of 10 *l.* and thereof he bringeth his ſuit, *&c.* * And the

* If one brings an action as adminiſtrator, he muſt make a *Profert in cur.* of his letters of adminiſtration, by which he is intitled to the action. *Cuts* and *Bennet*, *Cro. Jac.* 409, 412. Held matter of ſubſtance; diverſity where one brings an action, and where one pleads an adminiſtration in bar. *Cart.* 227. 6 *Mod.* 242. *Cro. Jac.* 556. *Vide* 1 *Sid.* 98. *Style* 236.

the ſaid *Robert Richardſon* bringeth here into court the ſaid letters of adminiſtration, which teſtify the committing the ſaid adminiſtration in form aforeſaid; the date whereof is on the day and year in that behalf above mentioned, *&c.*

Debt on a judgment of the palace court.

Surrey, *to wit*, *J. M.* late, *&c.* was ſummoned to anſwer *H. G.* of a plea, that he render to him 99*s.* and 8*d.* which he oweth to and unjuſtly detaineth from him, *&c.* And thereupon the ſaid *H.* by *J. C.* his attorney ſaith, that whereas the ſaid *H.* (that is to ſay) at the court of the king's palace at *Weſtminſter*, held before the judges of the ſaid court there (*to wit*) at *Southwark* in the county of *Surrey* aforeſaid, within the juriſdiction of the ſaid court, on *Friday* the 23d day of *January* in the ninth year of the reign of the preſent king, by conſideration of the ſaid court recovered againſt the ſaid *J. M.* (by the name of *J. M.*) 99*s.* and 8*d.* which were aſſeſſed to the ſaid *H.* in the aforeſaid court of the king's palace at *Weſtminſter*, held before the

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282. A verdict did not help, becauſe not neceſſary to be proved on the trial. But it is now remedied by 16 & 17 *Car.* 2. *Salk.* 38. 4 *Mod.* 133. *Comb.* 196.

After verdict, judgment ſhall not be ſtayed or reverſed for want of a *Profert in curia* of any letters of adminiſtration. *Stat.* 16 & 17 *Car.* 2. *c.* 8.

No advantage or exception ſhall be taken for the default of alledging the bringing into court letters of adminiſtration; but the court ſhall give judgment according to the right, unleſs the ſame be particularly ſet down, and ſhewed for cauſe of demurrer. *Stat.* 4 & 5 *Ann. c.* 16.

ſaid judges of the ſaid court there, for his damages which he had ſuſtained, as well by occaſion of the not performing ſeveral promiſes and undertakings made by the ſaid *J. M.* to the ſaid *H.* as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *J.* is convicted, as by the record and proceedings thereof in the ſame court of the king's palace at *Weſtminſter*, held before the judges of the ſaid court there, *to wit*, at *Southwark* aforeſaid in the county of *Surrey* aforeſaid, within the juriſdiction of the ſaid court there remaining may appear; which ſaid judgment ſtill remaineth in the ſaid court there in full force, not in the leaſt ſatisfied, reverſed or diſcharged; and the ſaid *H. G.* hath not as yet ſued out any execution upon that judgment, by which an action hath accrued to the ſaid *H.* to require and have of the aforeſaid *J. M.* the aforeſaid 99*s.* and 8*d.* *Yet*, &c.

Plea, *Nul tiel record.*

Repl. *Habetur tale record'.*

And hereupon the ſaid *H.* prayeth the king's writ to be directed to the judges of the court of the king's palace at *Weſtminſter*, and to every of them, to certify to the juſtices of the ſaid lord the king here, whether there be ſuch record of ſuch recovery of the ſaid 99*s.* and 8*d.* againſt him the ſaid *J.* by the ſaid *H.* or not; and it is granted to him, returnable here. ——— At which day here come as well the ſaid *H.* as the ſaid *J.* by their attornies aforeſaid, and the ſaid

Certiorari *to the judges of that court.*

judges of the court, namely, *W.* duke of *D.* ſteward of the king's houſhold, Sir *P. M.* knight, marſhal of the ſaid houſhold, and Sir *T. A.* knight, ſteward of the palace court aforeſaid, ſent to the juſtices here the record aforeſaid, whereof there is mention above made between the parties aforeſaid, and remaining before them; which ſaid writ and record remain filed amongſt the records here, without day, *&c.*

Whereupon the ſaid *H.* prayeth judgment and his debt aforeſaid, together with his damages by reaſon of detaining the ſaid debt, to be adjudged to him, *&c.*

Thomſon.

Trinity *term in the thirteenth and fourteenth years of the reign of king* George *the ſecond.*

Debt on bond by executor againſt an heir at law.

London, *to wit,* JOHN *Stout*, late of the town of *Hertford* in the county of *Hertford*, gent. brother and heir of *Henry Stout*, late of the iſland of *Jamaica*, eſq; deceaſed, otherwiſe lately called *Henry Stout, nunc in* London, *ſed de inſula* Jamaicæ, *armiger*, was ſummoned to anſwer *Sarah Fitter*, widow, executrix of the teſtament and laſt will of *James Fitter*, late of *London*, merchant, deceaſed, of a plea that he render to her 4330*l.* which he unjuſtly detaineth, *&c.* and whereupon the ſaid *Sarah*, by *Joſhua Sharpe* her attorney ſaith, that whereas the ſaid *Henry*, brother of the ſaid *John*, whoſe

1 Lev. 130, 224.

whoſe heir he is, in his life-time, *to wit*, on the fifth day of *November* in the year of our lord 1725, at *London*, *to wit*, in the pariſh of *St. Mary Le Bow* in the ward of *Cheap*, by his writing obligatory acknowledged himſelf to be bound to the ſaid *James* in his life-time in the ſaid 4330*l.* to be paid to the ſaid *James* when he ſhould be thereunto required; and to which payment well and faithfully to be made he bound himſelf and his heirs by the ſaid writing; *Yet* the ſaid *Henry* in his life-time, and the ſaid *John*, brother and heir of the ſaid *Henry*, after the death of the ſaid *Henry* (although often required) have not, nor hath either of them paid the ſaid 4330*l.* to the ſaid *James* in his life-time, or to the ſaid *Sarah* after the death of the ſaid *James*, but refuſed to pay the ſame to the ſaid *James* in his life-time, and to the ſaid *Sarah* after his death; and the ſaid *John* ſtill refuſeth to pay the ſame to the ſaid *Sarah*, and unjuſtly detaineth, in delay of the faithful execution of the ſaid teſtament: Whereupon ſhe ſaith ſhe is injured, and hath damage to the value of 20*l.* and thereof ſhe bringeth ſuit, *&c.* And the ſaid *Sarah* bringeth here into court, as well the ſaid writing which teſtifieth the ſaid debt in form aforeſaid, whoſe date is the ſame day and year aforeſaid, * as the letters teſtamentary

* When one ſues as executor, he muſt in his declaration ſhew forth the teſtament to intitle him to the action. *Edwards* and *Stapleton*, *Cro. Eliz.* 551. *Cope*

teſtamentary of the ſaid *James*, whereby it appeareth to the court here, that the ſaid *Sarah* is executrix of the teſtament and laſt will of the ſaid *James*, and thereof hath the adminiſtration, *&c.*

Plea, Riens per diſcent. 1 Lev. 130, 224. Stat. 3, 4 W. & M. c. 14. 5 Mod. 122. Redſhaw *and* Heſter. Jeffry *and* Barrow, Paſ. 10 Annæ. Caſes in law and equity 18.

And the ſaid *John*, by *Thomas Smith* his attorney, cometh and defendeth the force and injury, when, *&c.* and ſaith, That he ought not to be charged with the debt aforeſaid, as brother and heir of the ſaid *Henry*, by virtue of the ſaid writing, becauſe proteſting, that the writing aforeſaid is not the deed of the ſaid *Henry*; *And* for plea ſaith, that he hath not any lands or tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, nor had on the day of obtaining the original writ of the ſaid *Sarah*, nor at any time ſince; and this he is ready

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and *Lewin*, *Hob.* 38. 1 *Brownl.* 9. *Browning* and *Fuller*, *Cro. Jac.* 299. It is matter of ſubſtance, and not form only. 1 *Brownl.* 200. But whether ſubſtance or form. *Hob.* 233. *Cro. Jac.* 556. 2 *Saund.* 402. 1 *Sid.* 249. Diverſity taken, where upon the executor's own poſſeſſion, and where upon the poſſeſſion of the teſtator. 2 *Rol. Rep.* 428. *Hob.* 218. Where the want thereof is help'd by the defendant's pleading thereto. 1 *Salk.* 37, 38. 6 *Mod.* 135. *Comb.* 465. *Noy* 63.

After verdict, judgment ſhall not be ſtayed or reverſed for want of a *Profert in curia* of any letters teſtamentary. *Stat.* 16, 17 *Car.* 2. *c.* 8.

No advantage or exception ſhall be taken for the default of alledging the bringing into court of letters teſtamentary, but the court ſhall give judgment according to the right, unleſs the ſame be particularly ſet down and ſhewn for cauſe of demurrer. *Stat.* 4 *Ann. c.* 16.

to verify: Wherefore he prayeth judgment, if he ought to be charged with the debt aforeſaid, as brother and heir of the ſaid *Henry*, by virtue of the writing aforeſaid. Lilly 147.

Replication.

And the ſaid *Sarah* ſaith, that by any thing by the ſaid *John* above in pleading alledged, ſhe ought not to be precluded from having her ſaid action againſt him, becauſe ſhe ſaith, that before the day of obtaining her ſaid original writ, *to wit*, on the 3d day of *April* in the 13th year of the reign of our ſaid lord the now king, the ſaid *John* had *ſufficient* lands and tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, whereout he might have ſatisfied the ſaid *Sarah* the debt and damages aforeſaid, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment, and that the ſaid debt, together with the damages by means of the detention of the ſaid debt, may be adjudged unto her, *&c.*

Rejoinder.

And the ſaid *John* ſaith, that before the day of obtaining the ſaid original writ of the ſaid *Sarah*, he had not *ſufficient* lands and tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, whereout he might have ſatisfied the ſaid *Sarah* the debt and damages aforeſaid, *or any part thereof*, as the ſaid *Sarah* hath in replying above alledged: And of this he putteth himſelf on the country, *&c.* And the ſaid *Sarah* doth ſo likewiſe, *&c.*

Debt on a bond by surviving obligees.

Oxfordſhire, *to wit*, *A. H.* late, *&c.* (otherwiſe called, *&c.*) was ſummoned to anſwer *W. B. J. V.* and *T. B.* of a plea, that ſhe render to them 10*l.* of lawful money of *Great Britain*, which ſhe oweth to them, and unjuſtly detaineth, *&c.* and whereupon the ſaid *W. J.* and *T.* by *C. C.* their attorney ſay, that whereas the ſaid *A.* on the —— day of ———, in the year of our lord ——, at ——————— in the county aforeſaid, by her certain writing obligatory had acknowledged herſelf to be bound to the ſaid *W.* and to one *V. S.* now deceaſed (whom the ſaid *W. J.* and *T.* ſurvived) and the ſaid *J.* and *T.* in the aforeſaid 10*l.* to be paid to them the ſaid *W. V. J.* and *T.* when ſhe the ſaid *A.* ſhould be thereunto required; *Yet* the aforeſaid *A.* (though often required) hath not paid the ſaid 10*l.* to the ſaid *W. V. J.* and *T.* or any of them, in the life-time of the ſaid *V.* or to the ſaid *W. J.* and *T.* or any of them, ſince the death of the ſaid *V.* (whom the ſaid *W. J.* and *T.* ſurvived) but hath refuſed to pay them the ſame, and yet doth refuſe to pay the ſame to the ſaid *W. J.* and *T.* Whereupon they ſay they are injured, and have damage to the value of 10*l.* and thereof they bring ſuit, *&c.* And they bring here into court the ſaid writing obligatory, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is on the day and year aboveſaid, *&c.*

Middleſex,

Debt on a bond by the executor of the obligee.

Middleſex, *to wit*, *J. M.* late of *Weſtminſter* in the county of *Middleſex* aforeſaid, lime-merchant, otherwiſe called *J. M. de paroch. ſanct. Margar' Weſtminſt. in com. Middleſex*, —— was ſummoned to anſwer unto *W. F.* executor of the teſtament and laſt will of *R. F.* his late father deceaſed, in a plea, that he render to the ſaid *W. F.* 200*l.* which he unjuſtly detaineth from him, *&c.* And whereupon the ſaid *W. F.* by *W. W.* his attorney ſaith, that whereas the aforeſaid *J.* the 22d day of *April* in the year of our lord 1728, at *Weſtminſter* aforeſaid in the county aforeſaid, by his certain writing obligatory acknowledged himſelf to be held and firmly bound unto the aforeſaid *R. F.* in his life-time in the aforeſaid 200*l.* to be paid to the aforeſaid *R. F.* his executors or adminiſtrators, when he the ſaid *J.* ſhould be thereunto required: Nevertheleſs the aforeſaid *J.* (although often required) the aforeſaid 200*l.* to the aforeſaid *R. F.* in his life-time, or, to the aforeſaid *W. F.* after the deceaſe of the aforeſaid *R. F.* hath not paid, but hath refuſed to pay them the ſame, and ſtill refuſeth to pay the ſame to the ſaid *W. F.* and unjuſtly detaineth the ſame: Whereupon the ſaid *W. F.* ſaith that he hath ſuſtained damage to the value of 10*l.* and thereof he bringeth this ſuit, *&c.* And he bringeth here into court as well the writing obligatory aforeſaid, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is on the day and year aforeſaid, as alſo

also the letters testamentary of the aforesaid *R. F.* whereby it sufficiently appeareth to the court here, that the aforesaid *W. F.* is the executor of the testament and last will of the aforesaid *R. F.* and thereupon to have administration, *&c.*

Debt on a bond against the executor of the obliger.

J. J. late of, *&c.* executor of the testament and last will of *E. B.* deceased, was summoned to answer *J. T.* of a plea, that he render to him 120*l.* which he unjustly detaineth from him, *&c.* And whereupon the said *J. T.* by *W. W.* his attorney saith, that whereas the above-named *E.* in her life-time, *to wit*, on the —— day of ——, in the year of our lord ——, at —— in the county of —— aforesaid, by her writing obligatory acknowledged herself to be bound to the said *J. T.* in the aforesaid 120*l.* to be paid to the same *J. T.* when she the said *E.* should be thereunto required: *Nevertheless* the said *E.* in her life-time, or the said *J. J.* after the death of the said *E.* although often required, have not, nor hath either of them paid the said 120*l.* to the said *J. T.* but they refused, and the aforesaid *J. J.* doth still refuse to pay him the same; and whereupon the said *T.* saith he is injured, and hath damage to the value of 10*l.* and thereof he bringeth his suit, *&c.* and he bringeth here into court the writing aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is on the same day and year aforesaid.

Plea, Ne unques executor.

And the said *J. J.* by *F. B.* his attorney cometh and defendeth the force and injury, when,

when, &c. and ſaith, that the ſaid *J. T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that he the ſaid *J. J.* never was executor of the teſtament and laſt will of *E. B.* deceaſed, as the ſaid *J. T.* by his ſaid declaration above alledgeth, neither did he ever as an executor of the teſtament and laſt will of the ſaid *E. B.* adminiſter any of the goods and chattels which were the ſaid *E. B.*'s at the time of her deceaſe; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J. T.* ought to have his ſaid action againſt him, &c.

Replication.

And the ſaid *J.* ſaith, that he ought not to be precluded from having his aforeſaid action againſt the ſaid *J.* becauſe he ſaith that the aforeſaid *J.* hath, as executor of the teſtament and laſt will of the ſaid *E. B.* adminiſtered divers goods and chattels which were of the ſaid *E. B.* at the time of her deceaſe, that is to ſay, at ——— aforeſaid: And this he prayeth may be inquired of by the country, &c.

Cooke.

Michaelmas *term in the eleventh year of the reign of king* George *the ſecond.*

Debt on a bail-bond at the ſuit of an attorney.

Surrey, *to wit,* *J. L.* late of Saint *Olave* in *Southwark* in the county of *Surrey* aforeſaid, woolſtapler, was attached by his preſent majeſty's writ of privilege iſſuing out of

of this court, to anſwer to *L. R.* gentleman, one of the attornies of his ſaid majeſty's court of common bench here, according to the liberties and privileges of the ſame court for ſuch attornies, and other miniſters of the ſame bench from time beyond the memory of man uſed and approved in the ſame court, in a plea of debt, and whereupon the ſaid *L.* in his proper perſon ſaith, that the ſaid *J.* hath not rendered to him the ſaid *L.* 63 *l.* 2 *s.* of lawful money of *Great Britain*, which he oweth to him, and unjuſtly detaineth, for that whereas, on the 29th day of *June* in the 11th year of his preſent majeſty's reign, the ſaid *L.* (he being then one of the attornies of the ſaid court of common bench) ſued forth out of his majeſty's ſaid court of common bench here, *to wit*, at *Weſtminſter* in the county of *Middleſex*, his ſaid majeſty's writ, called a writ of attachment of privilege, againſt the ſaid *J. L.* woolſtapler, directed to the ſheriff of the ſaid county of *Surrey*, by which ſaid writ the ſaid ſheriff was commanded by his ſaid majeſty to attach the ſaid *J. L.* if he ſhould be found within his bailiwic, and him ſafely keep, ſo that he might have him before his ſaid majeſty's juſtices at *Weſtminſter*, on *Monday* next after three weeks from the day of Saint *Michael* then next following, to anſwer the ſaid *L.* one of the attornies of his ſaid majeſty's court of common bench, according to the liberties and privileges of that court for ſuch like attornies and other miniſters of the ſame bench uſed and approved of

of in the ſame, from the time whereof there was not any remembrance to the contrary, in a plea of *treſpaſs upon the caſe*, and that the ſaid ſheriff ſhould have there that writ; which ſaid writ afterwards, and before the return thereof, that is to ſay, on the 11th day of *Auguſt* in the year of our lord 1737. at the ſaid pariſh of St. *Olave Southwark* in the ſaid county of *Surrey*, was delivered by the ſaid *L.* to *J. R.* then, and continually afterwards until the return of the ſaid writ, ſheriff of the ſaid county of *Surrey*, to be executed in due form of law; by virtue of which ſaid writ the ſaid *J. R.* afterwards, and before the return of the ſaid writ, that is to ſay, on the ſaid 11th day of *Auguſt* in the ſaid year of our lord laſt above mentioned, at the ſaid pariſh of St. *Olave Southwark* aforeſaid, within his bailiwic, arreſted the ſaid *J. L.* and had and detained him there in his cuſtody by virtue of the ſaid writ, until the ſaid *J. L.* afterwards, and before the return of the ſaid writ, *to wit*, on the ſaid 11th day of *Auguſt* in the year of our lord 1737. at the pariſh of St. *Olave Southwark* aforeſaid in the ſaid county of *Surrey*, by his writing obligatory, commonly called a bail-bond, *acknowledged himſelf* to be held and firmly bound to the ſaid *J. R.* by the name of *J. R.* eſq; high ſheriff of the county of *Surrey* aforeſaid, in the ſum of 63*l.* 2*s.* of good and lawful money of *Great Britain*, to be paid to the ſaid ſheriff when he ſhould be thereto required, with a condition thereunder written, that if the ſaid

J. L.

J. L. ſhould appear before his ſaid majeſty's juſtices at *Weſtminſter* on the ſaid *Monday* next after three weeks from the day of Saint *Michael*, to anſwer the ſaid *L.* one of the attornies, and ſo forth, in the ſaid plea of treſpaſs upon the caſe, that then that obligation to be void and of no force; otherwiſe to ſtand and remain in full force, vigour and effect; which ſaid writing obligatory, with the ſaid condition there-under written, was taken by the ſaid ſheriff by virtue of the ſaid writ, and by force of the ſtatute in ſuch caſe lately made and provided. And the ſaid *L.* in fact ſaith, that the ſaid *J. L.* did not appear before his ſaid majeſty's juſtices at *Weſtminſter*, on the ſaid *Monday* next after three weeks from the day of Saint *Michael*, in the condition aforeſaid mentioned, to anſwer to the ſaid *L.* in his ſaid plea of treſpaſs upon the caſe, according to the form and effect of that condition, whereby that writing obligatory became forfeited to the ſaid *J. R.* and the ſame being ſo forfeited, and the money therein mentioned, or any part of it, not being paid, he the ſaid *J. R.* ſheriff of the ſaid county of *Surrey* afterwards, that is to ſay, on the firſt day of *November* in the year of our lord 1737. at the ſaid pariſh of Saint *Olave Southwark*, aſſigned to the ſaid *L.* the ſaid writing obligatory, by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two credible witneſſes, *to wit*, *E. H.* and *G. N.* according to the form of the ſtatute in ſuch caſe made and provided;

by

by reaſon of which ſaid premiſſes, and by force of the ſtatute in ſuch caſe made and provided, an action hath accrued to him the ſaid *L.* as aſſignee of the ſaid *J. R.* ſheriff of the ſaid county of *Surrey*, to demand and have of the ſaid *J. L.* the ſaid ſum of 63*l.* 2*s.* Nevertheleſs the ſaid *J. L.* (although often requeſted) hath not rendered the ſaid ſum of 63*l.* 2*s.* to the ſaid *L.* but hitherto always hath refuſed, and ſtill doth refuſe, to render the ſame to the ſaid *L.* and the aforeſaid ſum of money mentioned in the ſaid writing obligatory is ſtill remaining unſatisfied, to the damage of him the ſaid *L.* of 40*s.* and thereof he bringeth ſuit, *&c.* And the ſaid *L.* bringeth here into court the writing obligatory aforeſaid, in form aforeſaid indorſed, which teſtifieth the ſaid debt in manner aforeſaid, and beareth date the day and year in that reſpect above mentioned, *&c.*

John Doe, and *Richard Roe*, } Pledges for proſecuting.

Hilary *term*, &c.

London, *to wit*, *O. W.* late of *London*, linen-draper, was ſummoned to anſwer our lord the king, and *J. C.* who as well for our ſaid lord the king as for himſelf proſecuteth in this behalf, of a plea, that he render to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* 1260*l.* which to our ſaid lord the preſent king and the ſaid *J. C.* who

Declaration in debt Qui tam *on the ſtat.* 8 Anne, c. 9. ſ. 35. *For not inſerting in indentures of apprenticeſhip the full ſum received.*

who as well, *&c.* he oweth and unjuſtly detaineth, and whereupon the ſaid *J. C.* who as well for our ſaid lord the king as for himſelf proſecuteth in this behalf by *W. W.* his attorney ſaith, that by a certain indenture made at *London* aforeſaid, *to wit*, in the pariſh of ſaint *Mary le Bow* in the ward of *Cheap*, after the firſt day of *May* in the year of our lord 1710. *to wit*, on the 21ſt day of *Auguſt* in the year of our lord 1723. between one *T. H.* ſon of *W. H.* late of *C.* in the county of *Derby*, eſq; deceaſed, and the ſaid *O. W.* and in due manner executed, bearing date on the ſame day and year, the ſaid *T.* put himſelf apprentice to the ſaid *O.* by the name of *O. W.* citizen and leatherſeller of *London*, to be inſtructed in his art and buſineſs of a linen-draper, to ſerve as an apprentice from the day of the date of the ſaid indenture, unto the full end and term of ſeven years from thence next enſuing fully to be complete and ended; which ſaid indenture then and there made and executed, contained all the covenants, articles, contracts and agreements, relating to the ſerving the ſaid apprenticeſhip; and that in conſideration of the premiſſes, and for and in reſpect of the ſaid apprenticeſhip, the ſaid *T.* then, *to wit*, on the ſaid 21ſt day of *Auguſt* in the ſaid year of our lord 1723. at *London* aforeſaid, in the pariſh and ward aforeſaid, paid to the ſaid *O. W.* 300 pieces of coined gold money of *Great Britain*, called guineas, of the value in ready money of 315*l.* as a reward and conſideration for taking the ſaid *T.*

to

to be his apprentice, as aforeſaid; and that the ſaid ſum of money of 300 pieces of coined gold ſo given and paid, as aforeſaid, was not truly and fully inſerted, written and ſpecified in the ſame indenture, according to the form of the ſtatute in ſuch caſe lately made and provided, but in the place of it the ſum of 300 *l.* only was inſerted, written and ſpecified in the ſame indenture, contrary to the form and effect of that ſtatute, whereby an action has accrued to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* to demand and have of the ſaid *O.* 630 *l.* parcel of the ſaid 1260 *l.* being double the ſum ſo given and paid as aforeſaid. *And alſo* *Second count.* *whereas* by one other indenture made at *London* aforeſaid, in the pariſh and ward aforeſaid, after the firſt day of *May* in the year of our lord 1710. aforeſaid, *to wit*, on the ſaid 21ſt day of *Auguſt* in the year of our lord 1723. between one *T. H.* another ſon of the ſaid *W. H.* late of *C.* in the county of *Derby* eſq; deceaſed, and the ſaid *O. W.* and in due manner executed, bearing date on the ſame day and year, the ſaid laſt mentioned *T.* put himſelf apprentice to the ſaid *O. W.* to be inſtructed in his ſaid art and buſineſs of a linen-draper, to ſerve him after the manner of an apprentice, from the day of the date of the ſaid laſt indenture, unto the full end and term of ſeven years from thence next enſuing and fully to be complete and ended; which ſaid laſt indenture then and there made and executed, contained all the covenants, articles and agreements relating to the ſerving the ſaid

apprenticeſhip laſt mentioned; and that in conſideration of the premiſſes, and for and in reſpect of the ſaid apprenticeſhip laſt mentioned, the ſaid *T.* then, *to wit*, on the ſaid 21ſt day of *Auguſt* in the ſaid year of our lord 1723. at *London* aforeſaid in the pariſh and ward aforeſaid, paid to the ſaid *O. W.* 315*l.* of lawful money of *Great Britain*, as a reward and conſideration for taking the ſaid laſt mentioned *T.* to be his apprentice as aforeſaid; and that the ſaid ſum of 315*l.* ſo given and paid as aforeſaid, was not truly and fully inſerted, written and ſpecified in the ſaid laſt indenture, according to the form and effect of the ſtatute in ſuch caſe lately made and provided, but in the place thereof the ſum of 300*l.* only was inſerted, written and ſpecified in the ſaid laſt indenture, contrary to the form and effect of that ſtatute, whereby an action has accrued to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* to demand and have of the ſaid *O. W.* other 630*l.* reſidue of the ſaid 1260*l.* being double the laſt mentioned ſum ſo given and paid as aforeſaid; *Yet* the ſaid *O. W.* (although often required) hath not yet rendered the ſaid 1260*l.* or any parcel thereof, to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* or to either of them, but hath hitherto refuſed, and ſtill doth refuſe, to render the ſame to them, to the damage of the ſaid *J. C.* who as well, *&c.* of 10*l.* And thereof as well for our lord the king as for himſelf, he bringeth ſuit, *&c.*

London,

London, *to wit*, *H. H.* late of *London*, knight, and *R. A.* late, *&c.* eſq; were ſummoned to anſwer unto *R. C.* in a plea that they render to him 13*l.* which they owe, and unjuſtly detain from him, *&c.* and whereupon the ſaid *W.* by *J. T.* his attorney ſaith, that whereas the ſaid *W.* by the name of *W. C.* otherwiſe, *to wit*, in the term of the holy *Trinity* in the 6th and 7th years of the reign of the lord the now king, in the court of our lord the now king of the common bench at *Weſtminſter*, before Sir *Robert E.* knight, and his companions, then juſtices of our lord the king of the ſame bench at *Weſtminſter*, did recover by judgment of the ſaid court againſt *T. B.* by the name of *T. B.* 13*l.* for damages, which he the ſaid *W. C.* had ſuſtained by reaſon of the ſaid *T.*'s not performing certain promiſes and undertakings then lately made to the ſaid *W.* as for his coſts and charges by him laid out about the ſaid ſuit whereof the ſaid *T.* is convicted, as by the record and proceedings thereof remaining in the ſaid court may more fully appear; and the ſaid *W. C.* afterwards, *to wit*, the 13th day of *June* in the 7th year of the reign of the lord the now king, proſecuted out of the ſaid court of common bench, of and upon the ſaid judgment, a certain writ of the lord the now king, directed to the ſheriffs of *London*, by which writ the lord the now king commanded them that they ſhould take *T. B.* if he was to be found in their bailiwic, and

Debt againſt a ſheriff for an eſcape.

him ſafely keep, ſo that they might have his body before the juſtices of our lord the king at *Weſtminſter*, in ——— to ſatisfy *W. C.* for 13*l.* which in the court of the lord the king, before the juſtices of our lord the king at *Weſtminſter* had been awarded to the ſaid *W. C.* for his damages which he had ſuſtained by reaſon of the not performing ſeveral promiſes and undertakings made by the ſaid *T.* to the ſaid *W.* at *W.* whereof he was convicted. And reciting, whereas the ſheriff of the lord the king, of *Middleſex* had returned to the juſtices of the lord the now king at *Weſtminſter*, in ——— then laſt paſt, that the ſaid *T.* was not to be found in his bailiwic; and in as much as it was ſufficiently teſtified in the ſaid court of the lord the king, that he lurked and wandered up and down in their bailiwic, and that they ſhould have there that writ, which writ proſecuted as aforeſaid the ſaid *W. C.* afterwards, and before the return thereof, *to wit*, on the 30th day of *June* in the ſame 7th year of the lord the now king at *London* aforeſaid, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, delivered to the ſaid *H. H.* and *R. A.* then being ſheriffs of *London* in due form of law to be executed; by virtue of which writ the ſaid *H. H.* and *R. A.* then being ſheriffs of *London* as aforeſaid, afterwards, and before the return of the ſaid writ, *to wit*, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, took and arreſted the ſaid *T.* and then and there had him in their cuſtody in

execution for the ſaid damages; and the ſaid *T.* being ſo as aforeſaid in the cuſtody of the ſaid *H. H.* and *R. A.* then being ſheriffs of *London*, in execution for the damages aforeſaid, the ſaid *H. H.* and *R. A.* then being ſheriffs as aforeſaid, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, without the licence and againſt the will of the ſaid *W. C.* voluntarily permitted the ſaid *T.* to go out of their cuſtody at large where he would, the ſaid *W. C.* of his ſaid damages then or yet not being ſatisfied, by reaſon whereof an action accrued to the ſaid *W. C.* to demand and have of the ſaid *H. H.* and *R. A.* the ſaid ſum of 13*l.* yet the ſaid *H. H.* and *R. A.* have not, nor hath either of them rendered to the ſaid *W. C.* the ſaid 13*l.* but altogether have, and each of them hath hitherto refuſed, and yet do, and each of them doth yet refuſe to render the ſaid 13*l.* to the ſaid *W. C.* wherefore he ſaith that he is damaged and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

London, *to wit*, *J. B.* late of *London*, merchant, was attached to anſwer *R. S.* of a plea of treſpaſs on the caſe, *&c.* and whereupon the ſaid *R.* by *W. W.* his attorney complaineth, that whereas the ſaid *R.* the 7th day of *October* in the year of our lord 1734. at *London* (that is to ſay) in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, according to the uſe and cuſtom of merchants, cauſed to be made a certain wri- *Declaration on a policy of inſurance on a ſhip.*

ting of insurance, commonly called a policy of insurance, by which said writing the said *R.* by the name of *R. S.* as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might or should appertain in part or in all, did make assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from *London* to *Rotterdam*, and thence to *Gambia* and *Cape Coast*, upon any kind of goods and merchandizes whatsoever, loaden, or to be loaden aboard the good ship or vessel called the *Dolphin*, whereof was master under God for that present voyage *J. N.* or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof was or should be named or called, beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at *London* or elsewhere, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever should be arrived at *Rotterdam*, and during her stay there and thence to *Gambia*, and during her stay there and thence to *Cape Coast*, and the same there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance; the said goods and merchandizes by that agreement were and should be valued at ——, without farther account to be given

by the assured for the same. Touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprizals, takings at sea, arrest, restraints and detainments of all kings, princes and people, of what nation, condition or quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes, that had or should come to the hurt, detriment or damage of the said goods and merchandizes, or any part thereof; and in case of any loss or misfortune it should be lawful for the assured, their factors, servants or assigns, to sue, labour and travel for and about the defence, safe-guard and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the assurers, that that writing or policy of insurance should be of as much force and effect as the surest writing or policy of insurance thentofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London*, and so they the assurers were contented, and did thereby promise, and bind themselves each one for his own part, their heirs, executors, and goods, to the assured, their executors, administrators and assigns, for the due performance of the

premiſſes, confeſſing themſelves paid the conſideration due to them for that aſſurance by the aſſured, at and after the rate of 3*l.* 10*s.* *per cent.* and in caſe of loſs (which God forbid) the aſſured to abate 10*l.* *per cent.* In witneſs whereof they the aſſurers have ſubſcribed their names and ſums aſſured in *London*, as by the ſaid writing more fully appears; of which ſaid writing the ſaid *J.* afterwards, *to wit*, on the ſaid 17th day of *October* in the ſaid year of our lord 1734, at *London* aforeſaid, in the pariſh and ward aforeſaid had notice, and thereupon the ſaid *J.* afterwards, *to wit*, on the day and year laſt mentioned at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *R.* at the ſpecial inſtance and requeſt of the ſaid *J.* had then and there paid to the ſaid *J.* the ſum of 3*l.* 10*s.* of lawful money of *Great Britain* (being the reward of the aſſurance of 100*l.*) and had promiſed to perform all things in the ſaid writing contained on the part of the aſſured, to be performed for the aſſurance of 100*l.* to be made by the ſaid *J.* according to the tenor of the ſaid writing, he the ſaid *J.* took upon himſelf, and then and there faithfully promiſed to the ſaid *R.* to become the aſſurer of the ſaid *R.* for 100*l.* to perform all and ſingular the things in the ſaid writing contained to be performed on the part of the aſſurer, according to the true intent and meaning of the ſaid writing (the ſaid ſum of 100*l.* being the ſum ſubſcribed by the ſaid *J.* to the ſaid writing.) And the ſaid *R.* in fact

fact ſaith, that the ſaid ſhip at the time of the making of the ſaid writing, *to wit*, the ſaid 17th day of *October* in the year 1734, was in ſafety, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; and being ſo in ſafety afterwards, *to wit*, on the day and in the year laſt mentioned, the ſaid ſhip laſt mentioned departed and ſailed from *London* aforeſaid, in the pariſh and ward aforeſaid, with the ſaid goods and merchandizes loaded thereon, to ſail to *Rotterdam* aforeſaid, and from thence to *Gambia* and *Cape Coaſt* aforeſaid in her ſaid voyage; and the ſaid *R.* further ſaith, that the ſaid ſhip in her ſaid voyage from *Rotterdam* aforeſaid, before her arrival at *Cape Coaſt* aforeſaid, *to wit*, the 29th day of *March* which was in the year of our lord 1735, in ſailing in her ſaid voyage with goods and merchandizes loaded, and then on board her, to the value of 700*l.* of lawful money of *Great Britain*, upon the high ſeas was burnt and deſtroyed by fire, and the ſaid ſhip and all the ſaid goods and merchandizes were thereby then totally loſt and deſtroyed, whereof the ſaid *J.* afterwards, on the firſt day of *October* in the ſaid year 1735, at *London* aforeſaid, in the pariſh and ward aforeſaid had notice, and the ſaid *R.* then and there requeſted the ſaid *J.* to pay to him the ſaid *R.* 90*l.* parcel of the ſaid 100*l.* aſſured by him the ſaid *J.* as aforeſaid (deducting 10*l.* the reſidue thereof) in reſpect of the ſaid loſs which the aforeſaid *J.* ought to have paid to the ſaid *R.* according to the ſaid agreement; *Yet* the ſaid *J.*

not

not regarding his ſaid promiſe and undertaking, but contriving, and fraudulently intending to deceive and defraud the ſaid *R.* in this behalf, he the ſaid *J.* (tho' often requeſted ſo to do) hath not paid to the ſaid *R.* the ſaid 90*l.* or any part thereof, nor hath in any kind contented him for the ſame, but hath altogether refuſed, and yet refuſeth to pay to the ſaid *R.* the ſaid 90*l.* or any part thereof, or in any manner to content him for the ſame.

A count for money had and received, damages 100*l.*

Declaration on Aſſumpſit *to deliver goods according to agreement, earneſt being given.*

London, *to wit*, *J. P.* late of *Weſtminſter* in the county of *Middleſex*, chymiſt, was attached to anſwer unto *N. G.* in a plea, *&c.* That whereas the ſaid *J.* on the 29th day of *October* in the year of our lord 1734 at *London*, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, had bargained and ſold to the ſaid *N.* 100 lb. weight of fine *Turkey Rhubarb*, at the rate of 28*s.* *per* pound, amounting in the whole, according to that rate or price, to the ſum of 115*l.* the ſaid *J.* the ſaid 29th day of *October* at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration of 1*s.* of good and lawful money of *Great Britain* to him the ſaid *J.* by the ſaid *N.* then and there in hand paid in part of payment, and of the ſum of 114*l.* 19*s.* to the ſaid *J.* by the ſaid *N.* to be paid on the delivery of the ſaid 100 lb. weight of fine *Turkey Rhubarb*, he the ſaid *J.* did then and there undertake, and

and to the ſaid *N.* then and there faithfully promiſe to deliver the ſaid 100 lb. weight of the ſaid fine *Turkey Rhubarb* upon the 30th day of the ſaid month of *October* above-mentioned, at three of the clock in the afternoon of the ſame day at Mr. *B.*'s coffee-houſe; *Yet* the ſaid *J.* not regarding his ſaid promiſe and undertaking made as aforeſaid, but contriving, and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *N.* in this behalf, the ſaid 100 lb. weight of fine *Turkey Rhubarb*, or any part thereof, to the ſaid *N.* hath not delivered (although he the ſaid *N.* was *always* prepared and ready upon the delivery of the ſaid 100 lb. weight of fine *Turkey Rhubarb* in manner aforeſaid then and there to have paid the ſaid *J.* the ſaid 114*l.* 19*s.* which together with the ſaid 1*s.* paid by the ſaid *N.* to the ſaid *J.* as aforeſaid amount to 115*l.* (that is to ſay) 23*s.* for every pound weight of the ſaid 100 lb. weight of the ſaid fine *Turkey Rhubarb*, according to the agreement aforeſaid) but the ſaid *J.* hath hitherto neglected and refuſed, and ſtill doth neglect and refuſe to deliver to the ſaid *N.* the ſaid 100 lb. weight of fine *Turkey Rhubarb.*

Count for money had and received.

Declaration on Aſſumpſit to pay for a gelding let to a third perſon if he did not return it. 2 R. Raym. 1085.

London, *ſſ.* *J. P.* late, *&c.* was attached to anſwer unto *W. C.* in a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *W.* by *R. B.* his attorney complains, that whereas on the —— day of ——— in the year of our lord 1734, at *London* aforeſaid, in

in the parish of *St. Mary le Bow* in the ward of *Cheap*, in consideration that the said *W.* at the special instance and request of the said *J.* would let to hire, and deliver unto a certain person then and yet unknown to the said *W.* a certain gelding of the said *W.* to ride from *London* aforesaid to *Highgate* in the county of *Middlesex*, and so back again to *London* aforesaid, he the said *J.* undertook, and then and there faithfully promised the said *W.* to pay him 5*l.* 5*s.* if that person did not return the said gelding to the said *W.* the same day; and the said *W.* doth aver, that he confiding in the aforesaid promise of the said *J.* afterwards, *to wit*, the same day and year abovesaid at *London* aforesaid, in the parish and ward aforesaid, at the said request of the said *J.* did let to hire, and deliver unto the said person so unknown to the said *W.* the said gelding of the said *W.* to ride from *London* aforesaid to *Highgate* aforesaid, and so back again to *London* aforesaid; and that the said person so unknown to the said *W.* did not on the same day, or at any time afterwards, return the said gelding to the said *W.* whereof the said *J.* had notice, and therefore the said *J.* according to his aforesaid promise and undertaking, ought to have paid unto the aforesaid *W.* the said sum of 5*l.* 5*s.* *Yet* the said *J.* not regarding his aforesaid promise and undertaking, *&c.*

Trover by assignees of commissioners of bankruptcy.

Wilts, *to wit*, *E. D.* late, *&c.* and *R. M.* late, *&c.* were attached to answer *J. G.* and *R. P.* assignees of the debts, goods and chattels

tels of *S. L.* a bankrupt, according to the form of the ſtatutes made concerning bankrupts, of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* and *R.* by *S. S.* their attorney complain, that they the ſaid *J.* and *R.* on the —— day of ——— in the year of our lord —— at *Bradford* in the ſaid county of *Wilts*, were poſſeſſed of 30 broad cloths of the value of 600*l.* as of their own proper goods and chattels (they being as aforeſaid aſſignees of the debts, goods and chattels of the ſaid bankrupt) and being thereof ſo poſſeſſed, they the ſaid *J.* and *R.* the ſaid 30 broad cloths out of their hands and poſſeſſion caſually loſt and miſlaid; which ſaid 30 broad cloths afterwards, *to wit*, the day and year aforeſaid at *Bradford* aforeſaid, came to the hands and poſſeſſion of them the aforeſaid *E.* and *R.* by finding; and though the aforeſaid *E.* and *R.* knew the aforeſaid cloths to be the proper goods and chattels of the aforeſaid *J.* and *R.* and to them as aſſignees of the debts, goods and chattels of the ſaid *S. L.* the bankrupt, of right to belong and appertain: *Yet* they the aforeſaid *E.* and *R.* contriving and fraudulently intending the aforeſaid *J.* and *R.* of the aforeſaid cloths to deceive and defraud, have not, nor hath either of them delivered the aforeſaid cloths, or any of them to the aforeſaid *J.* and *R.* although they have by them been often requeſted to deliver the ſame; but they the aforeſaid *E.* and *R.* afterwards, *to wit*, the day and year aforeſaid at *Bradford* aforeſaid, to their own proper uſe did convert and diſpoſe

poſe of the aforeſaid cloths, to the damage of them the aforeſaid *J.* and *R.* 600 *l.* And thereof they bring ſuit, *&c.*

Declaration at the ſuit of an infant by his Prochein amy *againſt a ſheriff for a falſe return, whereby the plaintiff was taken on an attachment for a reſcous.*

Middleſex, *to wit*, *R. W.* late of *Weſtminſter* in the county aforeſaid, eſq; and *D. L.* late of the ſame, eſq; late ſheriff of the county of *Middleſex*, were attached to anſwer unto *J. H.* of a plea of treſpaſs on the caſe, *&c.* and whereupon the ſaid *J. H.* by *J. H.* who is admitted by his majeſty's court here to proſecute for the ſaid *J. H.* who is within the age of 21 years, as the next friend of the ſaid *J. H.* complaineth, that whereas on the 23d day of *January* in the term of St. *Hilary* in the 7th year of the reign of his preſent majeſty a writ of his ſaid majeſty iſſued out of his ſaid majeſty's court of common bench here, *to wit*, at *Weſtminſter* in the ſaid county, directed to the then ſheriff of *Middleſex*; by which ſaid writ the ſaid ſheriff was commanded, that he ſhould take *J. H.* then late of *St. Giles*'s in the ſaid county, ſcavenger, and *J. D.* if they ſhould be found in his bailiwic, and them ſafely keep, ſo that the ſaid ſheriff might have their bodies before the juſtices of his ſaid majeſty here, *to wit*, at *Weſtminſter* aforeſaid, from the day of *Eaſter* in 15 days then next following, to anſwer *T. B.* in a plea of treſpaſs; and alſo that the ſaid *J.* might anſwer the ſaid *T.* according to the cuſtom of the ſaid court of Common Bench here, of a certain plea of treſpaſs on the caſe upon promiſe, to the damage of him the ſaid *T.* 20 *l.* and that the ſaid

ſaid ſheriff ſhould then have there the ſaid writ; which ſaid writ afterwards, and before the return thereof, *to wit*, on the 9th day of *February* in the 7th year aforeſaid, at *Weſtminſter* aforeſaid, was delivered to the ſaid *R. W.* and *D. L.* then, and until and after the return of the ſaid writ, being ſheriff of the ſaid county, to be executed in due form of law, *Yet* the ſaid *R. W.* and *D. L.* then, and until and after the return of the ſaid writ, being ſheriffs as aforeſaid, not regarding the duty of the ſaid office of ſheriff of the ſaid county, but contriving and fraudulently intending to injure and oppreſs the ſaid *J.* in this particular, afterwards, *to wit*, at the return of the ſaid writ, did falſly, and in deceit of the ſaid court here return to and upon the ſaid writ to the juſtices of his ſaid majeſty here, *to wit*, at *Weſtminſter* aforeſaid, that by virtue of his ſaid writ to him directed, he made his warrant directed to *S. L. J. D.* and *R. R.* his bailiffs of the hundred of *Oſſulſton*, jointly and ſeparately to take and arreſt the ſaid *J. H.* in the ſaid writ named, by virtue of which ſaid warrant the aforeſaid *S. L.* afterwards, and before the return of the ſaid writ, *to wit*, on the 1ſt day of *April* in the 7th year aforeſaid, at the pariſh of *St. Giles's in the fields* in the ſaid county, within the ſaid hundred of *Oſſulſton* in the ſaid ſheriff's bailiwic, did take and arreſt the ſaid *J. H.* according to the command of the ſaid writ, and then and there kept him in ſafe cuſtody, until *E. H.* wife of the ſaid *J. H.* and the ſaid *J.* by the name of *J. H. &c.*

and

and divers other perſons unknown to the ſaid then ſheriff, and to the ſaid *S. L.* at the pariſh of *St. Giles*'s aforeſaid, with force and arms in and upon the ſaid *S. L.* the ſaid then ſheriff's bailiff aforeſaid, made an aſſault, and beat, wounded and ill-treated him, and then and there reſcued, and each and every of them did then and there reſcue the ſaid *J. H.* out of the cuſtody of the ſaid *S. L.* the ſaid then ſheriff's bailiff aforeſaid, againſt the ſaid then ſheriff's will, and againſt the will and without the conſent of the ſaid *S. L.* and him the ſaid *J. H.* did permit to go at large where he pleaſed; and the ſaid *J. H.* did then and there, with force and arms, reſcue himſelf, and eſcaped out of the cuſtody of the ſaid *S. L.* the ſaid then ſheriff's ſaid bailiff, againſt the ſaid then ſheriff's will, and without the conſent of the ſaid *S. L.* againſt the peace of the ſaid lord the king; and afterwards and before the return of the ſaid writ, the ſaid *J. H.* was not found in the ſaid then ſheriff's bailiwic, and therefore the ſaid then ſheriff could not have the body of the ſaid *J. H.* before his ſaid majeſty's juſtices at the day and place in the ſaid writ mentioned, as by the ſaid writ the ſaid then ſheriff was commanded; under pretence of which falſe return of the ſaid writ, afterwards, *to wit*, on the 23d day of *October* in *Michaelmas* term in the 8th year of the reign of his ſaid majeſty, a writ of his ſaid majeſty iſſued out of his ſaid majeſty's court of common bench here, *to wit*, at *Weſtminſter* aforeſaid, according to the courſe and uſage

uſage of the ſaid court, directed to the now ſheriff of the ſaid county of *Middleſex*; by which writ the ſaid now ſheriff was commanded that he ſhould not omit becauſe of any liberty in his ſaid county, but that he ſhould take the ſaid *E.* the ſaid wife of the ſaid *J. H.* and the ſaid *J.* if they were to be found in the bailiwic of the ſaid now ſheriff, and ſafely keep them, ſo that the ſaid now ſheriff might have their bodies before his ſaid majeſty's juſtices here, *to wit*, at *Weſtminſter* aforeſaid, from the day of St. *Martin* in 15 days then next following, to anſwer to his ſaid majeſty of certain treſpaſſes, reſcues and contempts, certified by the ſaid *R. W.* and *D. L.* late ſheriff of the county of *Middleſex* aforeſaid to his ſaid majeſty's juſtices at *W.* aforeſaid, from the day of *Eaſter* in 15 days then laſt paſt, by virtue of which the ſaid *J.* afterwards, and before the return of that writ, *to wit*, on the 11th day of *November* in the 8th year of the reign of his ſaid majeſty, at the ſaid pariſh of *St. Giles's in the fields* in the county aforeſaid, was attached, taken and impriſoned by *M. P.* and *J. S.* the ſaid now ſheriff of the ſaid county of *Middleſex*, and kept in priſon by them there for a long time, *to wit*, from thenceforth until the ſpace of 33 hours then next following; and the ſaid *J.* by reaſon of the premiſſes, was obliged to appear in the ſaid court here, *to wit*, at *Weſtminſter* aforeſaid, at the return of the ſaid writ, to anſwer to his ſaid majeſty for the ſaid treſpaſſes, reſcues and contempts as aforeſaid returned, according to the exigence

of the ſaid writ laſt above mentioned, and thereupon he the ſaid *J. H.* with one *R. J.* and *W. L.* afterwards, *to wit*, on the 22d day of *November* in the term of St. *Michael* in the ſaid 8th year of the reign of his ſaid majeſty, in his ſaid majeſty's court here, entered into a recognizance in the ſaid court here, for the perſonal appearance of the ſaid *J. H.* from the day of St. *Martin* in 15 days then next following, to anſwer all ſuch matters as ſhould be then and there objected againſt the ſaid *J. H.* and eſpecially for his contempt on the reſcous of the ſaid *J. H.* returned by the ſaid *R. W.* and *D. L.* the ſaid late ſheriff of *Middleſex* aforeſaid, and ſo from day to day till the ſaid *J. H.* ſhould be diſcharged by the ſaid court, and not depart the ſaid court without leave of the ſame court; whereas the ſaid *J. H.* in fact ſaith, that he is in no wiſe guilty of the ſaid ſuppoſed reſcous and contempt lately returned againſt him as aforeſaid, by reaſon of which falſe return of the ſaid writ above-mentioned ſo made by the ſaid *R. W.* and *D. L.* then ſheriff as aforeſaid, the ſaid *J. H.* not only bore and ſuſtained a long impriſonment as aforeſaid, but he hath been put unto divers great coſts and expences, amounting in the whole to a great ſum, *to wit*, to the ſum of 40 *l.* to the damage of the ſaid *J. H.* 90 *l.* Thereof he bringeth ſuit, *&c.*

Declaration in caſe for unskilfully managing a ſhip, where-

London, *to wit*, *H. G.* late, *&c.* mariner, was attached to anſwer to *T. H.* in a plea of treſpaſs upon the caſe, and whereupon the ſaid

ſaid *T.* by *G. N.* his attorney complaineth, that whereas the ſaid *T.* on the 28th day of *December* in the year of our lord 1735, at *London* aforeſaid, was poſſeſſed of divers goods and merchandizes, *to wit*, of 1000 baſkets of *Denia* raiſins, of the value of 360*l.* then laden on board a certain lighter then being in the river *Thames*, and then moored at a certain key adjoining to the ſaid river *Thames* at *London* aforeſaid; and whereas the ſaid *H.* upon the ſaid 28th day of *December* in the ſaid year of our lord 1735, at *London* aforeſaid, was poſſeſſed of and maſter of a certain ſhip or veſſel called the *Mary*, then being in the ſaid river *Thames* near the ſaid key, yet the ſaid *H.* not being ignorant of the premiſſes, but deviſing and maliciouſly intending to hurt and injure the ſaid *T.* in this behalf, upon the ſame day and year above mentioned at *London* aforeſaid, ſo ill, unſkilfully and negligently managed, governed and directed his ſaid ſhip or veſſel, that for want of good care and management of the ſaid *H.* of his ſaid ſhip or veſſel, the ſaid ſhip or veſſel of the ſaid *H.* then and there preſſed againſt the ſaid lighter, and broke one of the ſides of the ſaid lighter, whereby the water then and there flowed into the ſaid lighter ſo laden with the ſaid raiſins as aforeſaid, and very much damaged and ſpoiled the ſaid raiſins ſo laden therein, whereby he ſaith he is prejudiced, and hath damage to the value of 100*l.* and thereof he bringeth ſuit, *&c.*

by ſhe ran againſt a lighter and damaged plt's goods therein.

Declaration against an innkeeper for losing a horse of his guest.

Yorkshire, *to wit*, *W. J.* innkeeper of a common inn in *Cloughton* in the county aforesaid, was attached to answer *W. K.* of a plea of trespass upon the case; whereupon the said *W. K.* by *J. U.* his attorney complaineth, that whereas by the law and custom of *England*, innkeepers who keep common inns to entertain travellers passing along the country where such common inns are, and as guests lodging in the same inns safely and securely by night and day are bound to keep, without any loss or diminution of their goods and chattels being within the said inns, so that by default of such innkeepers or of their servants no damage may in any wise happen to such guests; and also whereas the said *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1st day of *November* aforesaid did hold and keep, and yet doth hold and keep a common inn in *C.* aforesaid, in the county aforesaid; and the said *W. K.* the said 7th day of *November* in the said inn as a guest did lodge, the said *W. K.* then and there in the said inn having with him a certain mare of the said *W. K.* of the price of 5 *l.* yet certain misdoers unknown to the said *W. K.* the said 7th day of *November* at *C.* aforesaid in the county aforesaid, in default of due keeping of the said *W. J.* and his servants, the mare of the said *W. K.* then and there put and placed in the said inn, under the custody of the said *W. J.* in the said inn of the said *W. J.* by the said *W. K.* a guest of the said *W. J.* in the said inn took and carried

carried away, and her detained from the ſaid *W. K.* againſt the will of the ſaid *W. K.* for a long time, *to wit*, for the ſpace of one month, and then and there did her beat, bruiſe and lame, ſo that ſhe became of no value, and other injuries to him did, to the great damage of the ſaid *W. K.* and againſt the ſaid law and cuſtom. *And alſo whereas* by the law and cuſtom of *England*, all innkeepers, who keep common inns to entertain travellers paſſing along the country where ſuch inns are, and as gueſts lodging in ſuch inns, all their goods and chattels, and all the goods and chattels being in the lawful cuſtody of ſuch gueſts, being in the ſaid inns night and day, are bound to keep without loſs or diminution, ſo that for default of ſuch innkeepers or their ſervants no damage may in any wiſe happen to ſuch gueſts, or to the goods and chattels which are in the lawful cuſtody of ſuch gueſts within the ſaid inns; and whereas the ſaid *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1ſt day of *November* aforeſaid in the ſame year, in his ſaid inn at *C.* aforeſaid in the county aforeſaid, in his ſaid inn did lodge the ſaid *W. K.* as his gueſt, the ſaid *W. K.* then and there having in his lawful cuſtody another mare of *H. H.* then and there being the proper mare of the ſaid *H. H.* of the price of 5*l.* by the ſaid *H. H.* to the ſaid *W. K.* before that time there lent, ſafely to be redelivered to the ſaid *H. H.* yet certain miſdoers unknown to the ſaid *W. K.* the ſaid

7th day of *November* at *C.* aforesaid in the county aforesaid, in default of due keeping of the said *W. J.* and his servants, the said last mentioned mare then and there put and placed under the custody of the said *W. J.* in the said inn of the said *W. J.* by the said *W. K.* a guest in the said inn of the said *W. J.* took and carried away, and her there detained from the said *W. K.* for a long time, *to wit*, the space of 11 days, and her then and there beat, bruised and lamed, so that she became of no value; by reason whereof the said *W. K.* paid the said *H. H.* a great sum of money, *to wit*, 21 *s.* in satisfaction of the injury done to the said mare; and he the said *W. J.* other injuries did to the said *W. K.* to the great damage of the said *W. K.* and against the said law and custom; whereupon the said *W. K.* saith that he is injured, and hath damage to the value of 10 *l.* and thereof he bringeth suit, *&c.*

Declaration in trespass for entering and hunting in a chase or warren, and killing game.

Cumberland, *to wit*, *F. T.* late, *&c.* was attached to answer *W. H.* in a plea wherefore he with force and arms entered into a free chase of the said *W.* at *M.* in the county aforesaid, and without his licence and consent in the same did hunt, and did take, kill and carry away hares, conies, pheasants and partridges; and also wherefore he with force and arms entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent did there hunt, and take, kill and carry away other hares, conies, pheasants and partridges, and other injuries to him

him did, to the great damage of the ſaid *W.* and againſt the peace of our lord the king; and whereupon the ſaid *W.* by *T. B.* his attorney complaineth, that the aforeſaid *F.* on the —— day of —— in the ——year of the reign of his preſent majeſty, and on divers other days and times between that day and the 1ſt day of *March* in the ——— year of the reign of his ſaid majeſty, with force and arms, *&c.* entered into the free chaſe of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent did in the ſame hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheaſants, *to wit*, 20 pheaſants, and partridges, *to wit*, 20 partridges; and alſo that the ſaid *F.* on the ſaid ſeveral days and times aforeſaid, with force and arms, *&c.* entered into the free warren of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheaſants, *to wit*, 20 other pheaſants, and partridges, *to wit*, 20 other partridges, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereupon the ſaid *W.* ſaith that he is prejudiced, and hath received damage to the value of 20*l.* and thereof he bringeth ſuit, *&c.*

Declaration in caſe for detaining plt.'s apprentice.

Derbyſhire, *to wit*, *W. L.* late, *&c.* was attached to anſwer *J. T.* of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* by *W. W.* his attorney complaineth, that

whereas *W.* the ſon of *W. M.* of, *&c.* by his certain indenture bearing date the ——— day of ——— in the year of our lord ——— at ——— aforeſaid, was juſtly and lawfully retained in the ſervice of him the ſaid *J.* after the manner of an apprentice, to be inſtructed in the art of a cutler, which the aforeſaid *J.* then uſed, until the end and term of nine years from thence next enſuing and fully to be complete and ended. And the ſame *W. M.* the ſon ſerved for the ſpace of three years and upwards next after the ſaid ——— day of ——— in the year aforeſaid, in the ſervice of him the ſaid *J.* in his art aforeſaid as an apprentice; nevertheleſs the aforeſaid *W. L.* not ignorant of the premiſſes, but contriving craftily and ſubtilly to deceive and defraud him the ſaid *J.* of the ſervice of his ſaid apprentice, and of all profit, advantage and gain, which he the ſaid *J.* by reaſon of his apprentice aforeſaid ſhould and might have and gain, afterwards during the ſaid term of nine years, *to wit*, on the 1ſt day of *July* in the year of our lord ——— at ——— aforeſaid in the ſaid county, knowing the aforeſaid *W. M.* the ſon to be the apprentice of him the ſaid *J.* did wrongfully intice and procure him the ſaid *W. M.* the ſon to depart from the ſaid ſervice of him the ſaid *J.* which ſaid apprentice of the ſaid *J.* afterwards, *to wit*, the ſame day and year, by reaſon of the ſaid inticements and procurements of the ſaid *W. L.* without any reaſonable or probable cauſe whatſoever left the ſervice of the ſaid *J.* his maſter, and abſented himſelf

himſelf from his ſaid ſervice for a long time, *to wit*, for a month then next following, and the ſaid *W. L.* injuriouſly detained and kept him the ſaid *W. M.* the ſon from his ſervice aforeſaid during that time, againſt the will of the ſaid *J.* *to wit*, at ——— aforeſaid, whereby the ſaid *J.* for all that time loſt the ſervice of his apprentice aforeſaid; *And whereas* the ſaid *W. M.* the ſon, afterwards, and during his ſaid apprenticeſhip, *to wit*, on the 2d day of *Auguſt* in the year of our lord —— without any reaſonable cauſe or juſt pretence abſented himſelf from the ſervice of his ſaid maſter, *to wit*, at —— aforeſaid; nevertheleſs the ſaid *W. L.* well knowing the premiſſes, but contriving and intending further to injure the ſaid *J.* and to deprive him of the further uſe, ſervice and benefit of his ſaid apprentice *W. M.* the ſon, afterwards, *to wit*, on the ſaid 2d day of *Auguſt* in the year of our lord ——— aforeſaid, at ——— againſt the will of the ſaid *J.* injuriouſly received the ſaid *W. M.* the apprentice into his ſervice, and detained and kept him from the ſervice of the ſaid *J.* his maſter for a long time, *to wit*, from thenceforth until the 1ſt day of *January* then next following; whereby the ſaid *J.* for all that time loſt the ſervice of his ſaid apprentice, to the damage of the ſaid *J.* of 40*l.* And thereof he bringeth ſuit, *&c.*

Declaration for taking and detaining plt.'s wife.

Herefordſhire, *to wit*, *R. S.* was attached to anſwer *W. B.* gentleman of a plea, wherefore he took *S.* the wife of the ſaid *W.* and keepeth

keepeth her taken, *&c.* and whereupon the ſaid *W.* by *J. C.* his attorney complaineth, that the ſaid *R.* on the firſt day of *June* in the year of our lord 1734. at the pariſh of *Bodenham* in the county aforeſaid, took the ſaid *S.* the wife of the ſaid *W.* and keepeth her yet taken, whereby he ſaith that he is prejudiced and damnified to the value of 500 *l.* and thereof he bringeth ſuit, *&c.*

Declaration for carrying away plaintiff's wife, goods and chattels.

Suffolk, *to wit*, *M. W.* late, *&c.* malſter, was attached to anſwer to *S. F.* gent. in a plea, wherefore with force and arms he took and carried away *T.* the wife of the ſaid *S.* together with the goods and chattels of the ſaid *S.* of the value of 500 *l.* found at *Stowmarket* aforeſaid, and detained the ſaid *T.* the ſaid wife of the ſaid *S.* there from the ſaid *S.* a long time, whereby the ſaid *S.* loſt the aid, comfort, fellowſhip, ſervice and aſſiſtance of his ſaid wife, and detained for a long time the ſaid goods and chattels, and doth ſtill detain the ſame, and did other wrongs to the ſaid *S.* to the great damage of the ſaid *S.* and againſt the peace of his preſent majeſty, *&c.* And whereupon the ſaid *S.* by *T. K.* his attorney complaineth, that the ſaid *M.* on the 15th day of *May* in the year of our lord 1733. at *S.* aforeſaid in the county aforeſaid, with force and arms, *&c.* took and carried away the ſaid *T.* then and now the wife of the ſaid *S.* together with the goods and chattels of the ſaid *S.* *to wit*, a gold watch, a watch-chain and picture ſet in gold, one pair of ear-rings of gold ſet with

with diamonds, two other gold rings, four gowns, four petticoats, one cloth cloak, one velvet hood, 20 holland ſhifts, two head-dreſſes of lace, and two other head-dreſſes of cambrick and lace, of the value of 200*l.* found at *S.* aforeſaid; and detained the ſaid *T.* the ſaid wife of the ſaid *S.* there from the ſaid *S.* a long time, *to wit*, from the ſaid 15th day of *May* in the ſaid year of our lord 1733. until the 18th day of *October* in the year of our lord 1735. whereby the ſaid *S.* during all that time loſt the aid, comfort, fellowſhip, ſervice and aſſiſtance of his ſaid wife; and alſo during all the time aforeſaid detained the ſaid goods and chattels, and doth ſtill detain the ſame, and did other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereby the ſaid *S.* ſaith that he is injured, and hath damage to the value of 2000*l.* and thereof he bringeth ſuit, *&c.*

Declaration for carnally knowing plaintiff's wife.

Devon, *to wit*, *G. F.* late, *&c.* was attached to anſwer *E. F.* of a plea, wherefore with force and arms he made an aſſault upon *M.* the wife of the ſaid *E.* at *K.* in the ſaid county, and her the ſaid *M.* debauched, abuſed, carnally knew and got with child, whereby the ſaid *E.* for a long time loſt the comfort and affection, and alſo the counſel, aſſiſtance and ſervice of his ſaid wife in his domeſtic affairs, and did him other wrongs, to the great damage of the ſaid *E.* and againſt the peace of our lord the king, *&c.* And whereupon the ſaid *E.* by *T. W.* his attorney

attorney complaineth, that the ſaid *G.* upon the 11th day of *November* 1732. and at diverſe other days and times between that day and the 4th day of *October* in the year of our lord 1733. with force and arms made an aſſault upon *M.* then the wife of the ſaid *E.* at *K.* aforeſaid in the county aforeſaid, and her the ſaid *M.* then and there debauched, abuſed, carnally knew and got her with child, whereby the ſaid *E.* for all the time aforeſaid loſt the comfort and affection, and alſo the counſel and aſſiſtance, and ſervice of his ſaid wife in his domeſtic affairs, and did him other wrongs, to the great damage of the ſaid *E.* and againſt the peace, *&c.* Whereupon he ſaith he is injured and hath damage to the value of 1000*l.* and thereof he bringeth ſuit, *&c.*

Declaration in caſe for dilapidations in not repairing chancel, &c.

Glouceſterſhire, *to wit*, *P. L.* late, *&c.* late rector of the pariſh church of *B.* in the ſaid county of *G.* was attached to anſwer to *W. A.* clerk, now rector of that church, in a plea of treſpaſs on the caſe, *&c.* and whereupon the ſaid *W. A.* by *T. M.* his attorney complaineth, that whereas all and ſingular rectors of churches within that part of his majeſty's kingdom of *Great Britain* called *England*, for the time being, ought by law well and ſufficiently to repair, ſupport and ſuſtain the chancels of their churches, and the walls and fences of their church-yards, and all and ſingular the houſes, edifices, buildings and ſtructures of and belonging to their rectories, and the walls and fences of their

their glebe lands thereof, and relinquiſh, yield up and leave the ſame without any dilapidations, or want of reparation whatſoever, to their ſucceſſors, rectors of ſuch churches, and in default thereof are bound and ought to pay and ſatisfy their ſucceſſors the full and true value of ſuch dilapidations and want of reparations. *And whereas* the ſaid *P.* was heretofore lawfully inſtituted, and inducted into the ſaid rectory and pariſh church of *B.* and on the firſt day of *November* in the year of our lord 1733. was the lawful rector thereof, and in right of the ſaid rectory was ſeiſed of a manſion-houſe, called the parſonage-houſe in the ſaid pariſh of *B.* with the barns, ſtables, out-houſes, edifices, buildings, yards, courts, gardens and appurtenances thereunto belonging, and alſo of ſeveral pieces or parcels of glebe land, parcel of the ſaid rectory, and ſo continued until ſuch time as herein after is mentioned, and afterwards, *to wit*, on the 25th day of the ſaid month of *November* in the ſaid year of our lord 1733. freely reſigned the ſaid rectory and pariſh church into the hands of *E.* late lord biſhop of *G.* deceaſed, then ordinary of that place, and thereupon the ſaid church being vacant by means of ſuch reſignation; and the ſaid *W. A.* afterwards, *to wit*, the 18th day of *December* in the year aforeſaid, was upon ſuch vacancy duly preſented to the ſaid church, and admitted, inſtituted and inducted into the ſame, and became, and hath continued, and now is the lawful rector of the ſaid church, and the

next

next ſucceſſor of the ſaid *P.* and the ſaid *W. A.* in fact ſaith, that at the ſaid time of the reſignation of the ſaid rectory and pariſh church by the ſaid *P.* the chancel of the ſaid pariſh church, and the walls and fences of the church-yards thereof, and the ſaid manſion or dwelling-houſe called the parſonage-houſe, part of and belonging to the ſaid rectory, the brewhouſe thereto adjoining, the barn, the ſtables, the coach-houſe, cart-houſe, the granary, the neceſſary-houſe, the chicken-houſe, and other out-houſes, edifices and buildings belonging to the ſaid manſion-houſe, the mound-walls round the garden and courts likewiſe belonging to the ſame houſe, the ſtone ſteps in the ſaid garden, and the rails on each ſide of ſuch ſteps, and alſo the walls and fences of the glebe lands, part alſo of the ſaid rectory, were very ruinous, and greatly dilapidated, and in decay for want of repairs, and were ſo left by the ſaid *P.* when he reſigned the ſaid rectory and church as aforeſaid, *to wit*, on the 25th day of *November* in the ſaid year of our lord 1733. And the ſaid *W. A.* further ſaith, that the ſum of money neceſſary to be expended and laid out for the neceſſary repairs of the ſaid premiſſes amounteth to, and at the time of the ſaid reſignation of the ſaid rectory and pariſh church by the ſaid *P.* amounted to 200*l.* of lawful money of *Great Britain*, of which the ſaid *P.* afterwards, *to wit*, on the 20th day of the ſaid month of *December* in the ſaid year 1733. at *B.* aforeſaid, had notice: *Nevertheleſs*

theleſs the ſaid *P.* intending to defraud the ſaid *W.* in this behalf, the ſaid ſum of 200*l.* or any part thereof, or any other ſum of money ſufficient for the neceſſary reparation of the ſaid premiſſes, ſo left by the ſaid *P.* dilapidated, and in ſuch a ruinous condition for want of repairs as aforeſaid, to the ſaid *W.* hath not paid or ſatisfied, although the ſaid *P.* was afterwards, *to wit*, the ſaid 20th day of *December* in the year laſt above-mentioned, at the ſaid pariſh of *B.* in the ſaid county of *G.* requeſted by the ſaid *W.* ſo to do; but the ſaid *P.* hath hitherto refuſed and ſtill refuſeth to pay or ſatisfy the ſame, or any ſum of money whatſoever to the ſaid *W.* for ſuch want of repairs and dilapidations as aforeſaid, to the damage of the ſaid *W.* of 200*l.* and thereof he bringeth ſuit, *&c.*

Northamptonſhire, *to wit*, *T. K.* late, *&c.* was attached to anſwer to *R. B.* who proſecuteth in this behalf as well for the king as for himſelf in a plea, wherefore he the ſaid *T.* hath followed a plea againſt the ſaid *R.* in the ſpiritual court againſt the king's prohibition, *&c.* and whereupon the ſaid *R.* who as well, *&c.* by *T. S.* his attorney complaineth, that whereas the pariſh of *Towceſter* aforeſaid is, and from the time beyond the memory of man was an ancient pariſh, within which pariſh for all that time there was and is an ancient pariſh church; and whereas he the ſaid *R. B.* now is, and for divers years laſt paſt was ſeiſed in his demeſne *Declaration in prohibition.*

meſne as of fee of and in an ancient meſſuage, with the appurtenances, in the pariſh of *Towceſter* aforeſaid, now or late in the tenure or occupation of *L. R.* and he the ſaid *R. B.* and all thoſe whoſe eſtates he had and hath of and in the ſaid meſuage, with the appurtenances, from time beyond the memory of man have at their own coſts repaired one ſeat or form in the ſaid church, which ſeat or form hath been lately taken in and made parcel of a pew in the ſaid church, and therefore have had and uſed for themſelves and family inhabiting in the ſaid meſuage the ſole and ſeparate uſe of the ſaid ſeat or form for the hearing and attending of divine ſervice in the ſaid church. *And whereas* all pleas and ſuits of and concerning cuſtoms and preſcriptions within this realm, and the cognizance of ſuch pleas and ſuits, ſpecially belong and appertain to his majeſty and his royal crown, and not to the court chriſtian, and by the common law of the land of this kingdom of *England*, and not by the eccleſiaſtical laws or cenſures ought to be tried, determined and diſcuſſed, and always hitherto were wont and ought: Nevertheleſs the ſaid *T. K.* well knowing the premiſſes, but contriving unjuſtly to grieve the ſaid *R. B.* and to diſherit his ſaid majeſty and his royal crown, and to bring the cognizance of a plea which ſpecially belongs to his preſent majeſty and his royal crown to another ſort of trial in the court chriſtian before the venerable *G. R.* doctor of laws, lawfully deputed vicar general in ſpirituals,

and principal official of the reverend father in Chriſt and lord *R.* by divine permiſſion biſhop of *Peterborough*, or his ſurrogate, hath impeach'd and controverted his ſuit, the right, title and poſſeſſion of the ſaid *R. B.* to the ſaid ſeat or form, now parcel of the ſaid pew; and although the ſaid *R. B.* hath pleaded and alledged all and ſingular the matters above by him here ſuggeſted in the ſaid court chriſtian before the ſaid ſpiritual judge, in maintenance of his ſaid right and poſſeſſion of the ſaid ſeat or form in the ſaid pew, and offered to prove the ſame by inevitable teſtimony; *Yet* the ſaid ſpiritual judge wholly refuſed to admit the ſaid allegation and proof, and the ſaid *T. K.* endeavoureth and daily contriveth to cauſe the ſaid *R. B.* to be condemned in the premiſſes in the ſaid court chriſtian, before the ſaid ſpiritual judge, in contempt of his ſaid preſent majeſty, and to the manifeſt damage, prejudice, impoveriſhment and grievance of the ſaid *R. B.* and againſt the common law of *England*. And although he the ſaid *R.* afterwards, *to wit*, on the 20th day of *January* in the year of our lord 1733, at the pariſh aforeſaid, delivered to the ſaid *T. K.* the king's writ of prohibition to the contrary thereof; Nevertheleſs the ſaid *T. K.* hath not ceaſed to follow his ſaid ſuit in the ſaid ſpiritual court, but hath ſince that time proſecuted and ſtill proſecuteth his ſaid ſuit there, notwithſtanding the ſaid writ of prohibition ſo delivered to him as aforeſaid, in contempt of his ſaid majeſty, and to the

great damage and grievance of the ſaid *R.* and againſt the ſaid prohibition; whereupon the ſaid *R.* who as well, *&c.* ſaith that he is injured, and hath damage to the value of 40*l.* and thereof he as well for the king as for himſelf bringeth ſuit, *&c.*

Declaration in debt for rent reſerved by indentures, at the ſuit of the heir.

Weſtmorland, *A. B.* late, *&c.* was ſummoned to anſwer *C. D.* ſon and heir at law of *E. D.* deceaſed, of a plea, that he render to him 14*l.* of lawful money of *Great Britain*, which he oweth to, and unjuſtly detaineth from him, *&c.* and thereupon the ſaid *C.* by *W. R.* his attorney ſaith, that whereas the ſaid *E.* in his life-time, *to wit*, on the 24th day of *January* in the year of our lord 1726, at *Kirby K.* aforeſaid, by a certain indenture then and there made between the ſaid *E.* by the name of ——, (*as in the leaſe*) of the one part, and the ſaid *A.* by the name of ——, (*as in the leaſe*) of the other, the other part of which indenture, ſealed with the ſeal of the ſaid *A.* the ſaid *C.* bringeth here into court, the date whereof is the ſame day and year, demiſed, leaſed, ſet, and to farm let unto the ſaid *A.* his executors, adminiſtrators and aſſigns, all his the ſaid *E.*'s burgage houſe, meſuage and tenement, ſituate, ſtanding and being at or near *Strickland gate end* (*ſo recite the parcels as in the leaſe*) to have and to hold the ſaid burgage houſe, meſuage and tenement, barn, *&c.* and all and ſingular other the premiſſes by the ſaid indenture demiſed, with the appurtenances (except before excepted) unto the

the ſaid *A.* his executors, adminiſtrators and aſſigns, from the 2d day of *February* next enſuing the day of the date of the ſaid indenture, for and during and unto the full end and term of 21 years from thence next enſuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term, unto the ſaid *E.* his heirs and aſſigns, the yearly rent or ſum of 14*l.* of lawful money of *Great Britain*, at two days or times of payment in the year, that is to ſay, at *Whitſuntide* and St. *Martin* the biſhop in winter, by even and equal portions; the firſt payment to begin and be made at *Whitſuntide* then next enſuing, as by the ſaid indenture may more fully appear; by virtue of which ſaid demiſe the ſaid *A.* entered into the ſaid demiſed premiſſes with the appurtenances (except before excepted) and was poſſeſſed thereof for the term thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances, belonging to the ſaid *E.* his heirs and aſſigns; and being ſo poſſeſſed, the reverſion thereof belonging as aforeſaid to the ſaid *E.* afterwards, *to wit*, the firſt day of *April* in the year of our lord 1733, at *K.* aforeſaid died ſeiſed of ſuch his eſtate of and in the ſaid reverſion, at whoſe death the ſaid reverſion, with the appurtenances, deſcended to the ſaid *C.* as ſon and heir of the ſaid *E.* whereby the ſaid *E.* became, and was ſeiſed of and in the ſaid reverſion with the appurtenances; and being ſo ſeiſed, and the ſaid *A.* being ſo poſſeſſed of the ſaid demiſed

premiſſes with the appurtenances, 14 *l.* of the rent aforeſaid, for one year ending at the feaſt of St. *Martin* the biſhop in the winter, in the year of our lord 1734, to the ſaid *C.* from the ſaid *A.* became in arrear, and ſtill remain unpaid, whereby an action hath accrued to the ſaid *C.* to demand and have of the ſaid *A.* the ſaid 14 *l.* yet the ſaid *A.* (although often requeſted) hath not yet paid the ſaid 14 *l.* or any part thereof, to the ſaid *C.* but to pay the ſame to him hitherto altogether hath refuſed, and ſtill doth refuſe, to the damage of the ſaid *C.* 10 *l.* and thereof he bringeth ſuit, *&c.*

Declaration in debt for rent reſerved by indenture againſt the aſſignee of the leſſee.

Middleſex, *to wit*, *J. L.* late of *Tottenham* in the county of *Middleſex*, eſq; aſſignee of *J. S.* eſq; otherwiſe lately called *J. S.* ſenior of *London*, eſq; was ſummoned to anſwer *G. B.* eſq; in a plea, that he render to him 6 *l.* 12 *s.* 6 *d.* which he oweth to him and unjuſtly detaineth, *&c.* and whereupon the ſaid *G.* by *E. B.* his attorney ſaith, that whereas by a certain indenture made at *Tottenham* aforeſaid, on the 17th day of *May* in the year 1716, between the ſaid *G.* by the name of *G. B.* of *Leatherhead* in the county of *Surrey*, eſq; of the one part, and the ſaid *J. S.* by the name of *J. S.* ſenior, of *London*, eſq; of the other part, the counterpart of which indenture ſealed with the ſeal of the ſaid *J.* the ſaid *G.* bringeth here into court, bearing date the ſame day and year, for the conſideration therein mentioned he the ſaid *G.* did demiſe, grant and to farm let unto the ſaid *J. S.*

J. S. all that manſion-houſe, meſuage, tenement, waſh-houſes, ſtables, out-houſes, yards, gardens, orchards, fiſh-pond or canal, with the appurtenances, which were then lately in the tenure or occupation of *R. C.* his under-tenants or aſſigns; and which ſaid manſion-houſe and premiſſes abutted eaſtward on a field called the *Royal Field*, belonging to *T. M.* of *London*, goldſmith, weſtward on *Tottenham* high road, northward on a barn and orchard belonging to the ſaid *G. B.* in the tenure or occupation of the ſaid *W. B.* and ſouthward on a garden belonging to the ſaid *G. B.* in the tenure or occupation of the ſaid *W. B.* and alſo that little meſuage and tenement built upon the wall belonging to the ſaid manſion-houſe, fronting alſo upon the high road of *Tottenham* aforeſaid, then alſo in the tenure or occupation of the ſaid *W. B.* his under-tenants or aſſigns, together with all ways, eaſements, watercourſes, commodities and appurtenances whatſoever to the ſaid manſion-houſe, meſuages or tenements belonging or in any wiſe appertaining; all which ſaid premiſſes are ſituate and being in the pariſh of *Tottenham High Croſs* in the county of *Middleſex*; to have and to hold the ſaid manſion-houſe, meſuages or tenements, waſh-houſes, ſtables, out-houſes, yards, gardens, orchards, fiſh-pond or canal, and all other the premiſſes, with their and every of their appurtenances above by the ſaid indenture demiſed and granted unto the ſaid *J.* his executors, adminiſtrators, and aſſigns, from the feaſt-day of the annunciation of the bleſ-

ſed virgin *Mary* laſt paſt before the date of the ſaid indenture, for and during and unto the full end and term of 21 years from thence next enſuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term unto the ſaid *G.* his heirs and aſſigns, the yearly rent or ſum of 26*l.* 10*s.* of lawful money of *Great Britain*, on the four feaſt-days or terms of payment in the year moſt uſual, that is to ſay, at the feaſt of the nativity of St. *John* the baptiſt, St. *Michael* the archangel, the birth of our lord Chriſt, and the annunciation of the bleſſed virgin *Mary*, by even and equal portions; the firſt payment thereof to begin and to be made upon the feaſt-day of St. *John* the baptiſt next enſuing the date of the ſaid indenture, as by the ſaid indenture more fully appeareth; by virtue of which demiſe the ſaid *J.* entered into the ſaid demiſed premiſſes with the appurtenances, and was thereof poſſeſſed; and being ſo poſſeſſed thereof, afterwards, *to wit*, on the 1ſt day of *April* in the year of our lord 1734, all the ſaid eſtate, right, title, intereſt and term of years of the ſaid *J.* then to come and unexpired, of and in the ſaid demiſed premiſſes with the appurtenances, by an aſſignment came to the ſaid *J. L.* by virtue of which aſſignment the ſaid *J. L.* entered into the ſaid demiſed premiſſes with the appurtenances, and was poſſeſſed thereof until the expiration of the ſaid term of 21 years, *to wit*, until and upon the feaſt of the annunciation of the bleſſed virgin *Mary* in the year of our lord

lord 1737, and 6*l.* 12*s.* 6*d.* of the rent aforeſaid, for the laſt quarter of a year of the ſaid term on that feaſt became due and in arrear from the ſaid *J. L.* to the ſaid *G.* by reaſon of which an action accrued to the ſaid *G.* to demand and have of the ſaid *J. L.* the ſaid 6*l.* 12*s.* 6*d.* Nevertheleſs the ſaid *J. L.* (although often requeſted) hath not rendered to the ſaid *G.* the ſaid 6*l.* 12*s.* 6*d.* or any part thereof; but hath hitherto wholly denied, and ſtill doth deny to render the ſame to the ſaid *G.* whereby the ſaid *G.* ſaith that he is injured, and hath damage to the value of 40*s.* and thereof he bringeth ſuit, *&c.*

And the ſaid *J. L.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and as to the ſum of 6*l.* 12*s.* 6*d.* which the ſaid *G.* above by his ſaid declaration ſuppoſeth to have been become due and in arrear for the rent of the ſaid premiſſes from the ſaid *J. L.* to the ſaid *G.* upon the feaſt of the annunciation of the bleſſed virgin *Mary* in the year of our lord 1737, for the laſt quarter of a year of the ſaid term on that feaſt in the ſaid declaration mentioned, the ſaid *J. L.* ſaith that no part thereof is due and in arrear to the ſaid *G.* as the ſaid *G.* by his ſaid declaration above ſuppoſeth; and of this he putteth himſelf upon the country, *&c.*

Plea, Nothing in arrear.

Staffordſhire, *to wit*, The inhabitants of the hundred of *Pirehill* in the county of *Staffordſhire* were attached to anſwer as well to our

Decl. againſt a hundred on the ſtatute of hue and cry.

Stat. of Winchester, 13 Edw. 1. ſt. 2. c. 1.

ſovereign lord the now king as to *H. W.* who as well for the ſame lord the king as for himſelf in this behalf ſueth of a plea, wherefore whereas in a certain ſtatute made in the parliament of the ſovereign lord *Edward* I. late king of *England*, held at *Weſtminſter* in the 13th year of his reign (amongſt other things) it is ordained, Foraſmuch as from day to day robberies, murders, burning of houſes and theft were then more often uſed than they had been theretofore, and felons could not be attainted by the oaths of jurors, who had rather ſuffer ſtrangers to be robbed, and to paſs without pain, than to indict the offenders, great part of whom were people of the ſame country; or at the leaſt if the offenders were of another country, the receivers were of places near, and they did the ſame becauſe an oath was not given unto jurors of the ſame country where ſuch felonies were done; and as to the reſtitution of damages before that time, no pain had been limited for their concealment and laches; the ſaid lord the late king for to abate the power of felons, had eſtabliſhed a pain in that caſe, ſo that from thenceforth, for fear of the pain more than for fear of any oath, they ſhould not ſpare any, nor conceal any felonies. And the ſaid lord the late king did command, that cries ſhould be ſolemnly made in all counties, hundreds, markets, fairs, and all other places where great reſort of people was, ſo that none ſhould excuſe himſelf by ignorance, that from thenceforth every country ſhould be ſo well kept, that immediately upon ſuch robberies

robberies and felonies committed, freſh ſuit ſhould be made from town to town, and from country to country; likewiſe when need is required, inqueſt ſhould be made in towns by him that was lord of the town, and after in the hundred and in the franchiſe, and in the county, and ſometimes in two or three or four counties, in caſe when felonies ſhould be committed in the marches of ſhires, ſo that the offenders might be attainted; and if the country would not anſwer for the bodies of ſuch manner of offenders, the pain ſhould be ſuch, that every country, (that is to ſay) the people dwelling in the country, ſhould be anſwerable for the robberies done, and all the damages, ſo that the whole hundred where the robberies ſhould be done, with the franchiſes, being within the precinct of the ſame hundred, ſhould be anſwerable for the robberies ſo done; and if the robbery ſhould be done in the diviſion of two hundreds, both the hundreds, and the franchiſes within them, ſhould be anſwerable; and after that the felony or robbery was done, the countries ſhould have no longer ſpace than 40 days, within which it ſhould behove them to agree for the robbery or offence, or elſe that they ſhould anſwer for the bodies of the offenders, as is plainly contained in the aforeſaid ſtatute; *And for that whereas* two certain robbers to the ſaid *H. W.* unknown, on the 5th day of *May* in the 10th year of the reign of the ſaid lord the now king, in the king's highway within the hundred of *Pirehill* aforeſaid in the ſaid county of *Stafford*, to wit,

wit, at a certain place near *Weſton*, commonly called *Wodden Lane*, between *Weſton* and *Amerton* in the pariſh of *Weſton* in the ſaid county of *Stafford*, within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, with force and arms upon him the ſaid *Henry* made an aſſault, and 25 *l.* in money of lawful money of *Great Britain*, of the proper monies of him the ſaid *H. W.* and alſo a leather purſe value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the ſaid *H. W.* then and there found, of and from him the ſaid *H. W.* did felonioufly take and rob and carry away, againſt the ſaid peace of our ſaid lord the now king; and the ſaid *H. W.* immediately after the felony and robbery aforeſaid done at *Wodden Lane* aforeſaid in the ſaid pariſh of *Weſton*, within the hundred of *Pirehill* aforeſaid in the county aforeſaid, being near the ſaid place where the ſame felony and robbery ſo as aforeſaid was committed, did make hue and cry of the aforeſaid felony and robbery upon him made, and then and there did give notice to the inhabitants of the pariſh of *Weſton* aforeſaid of the ſame felony and robbery; and did alſo, with as much convenient ſpeed as might be after the aforeſaid robbery on him committed as aforeſaid, give notice hereof to *T. W.* then a conſtable of the ſaid pariſh of *Weſton* aforeſaid in the ſaid hundred of *Pirehill*, being near unto the place where the ſaid robbery was committed as aforeſaid, and deſcribe in the aforeſaid notice to the aforeſaid conſtable, ſo far as the nature

Stat. 27 Eliz. c. 13.

nature and circumſtances of the caſe did admit, the ſaid felons, and the time and place of the aforeſaid robbery; and did alſo, within the ſpace of 20 days next after the aforeſaid robbery committed, cauſe public notice to be given thereof in the *London Gazette*, and did therein likewiſe deſcribe, ſo far as the nature and circumſtances of the ſaid caſe did admit, the ſaid felons, and the time and place of the aforeſaid robbery, together with the ſaid money, goods and effects whereof he the ſaid *H.* was robbed as aforeſaid, and afterwards did, and before the ſuing forth of the original writ of him the ſaid *H.* to wit, on the 15th day of *October* in the 11th year of the reign of the ſaid lord the now king, he the ſaid *H.* went before the ſheriff of the county of *Stafford* aforeſaid, and did then before the ſaid ſheriff enter into a bond to *T. B.* and *J. G.* then being high conſtables of the hundred of *Pirehill* aforeſaid, in the penal ſum of 100 *l.* with two ſufficient ſureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the ſame place, carpenter, approved by the ſaid ſheriff, with condition for ſecuring to the ſaid high conſtables the due payment of their coſts, after the ſame ſhould be taxed by the proper officer, in caſe that he the ſaid *H. W.* ſhould happen to be nonſuited, or ſhould diſcontinue his action to be brought againſt the ſaid inhabitants of the hundred of *Pirehill* aforeſaid, on account of the aforeſaid robbery; or in caſe that judgment ſhould be given againſt him the ſaid *H. W.* on demurrer, or that verdict

verdict ſhould be given againſt him therein, according to the form and directions of the Stat. 8 Geo. 2. c. 16. ſtatute in ſuch caſe lately made and provided; and after the felony and robbery aforeſaid done, and within 20 days next before the day of the ſuing forth of the ſaid original writ of him the ſaid *H. W.* he the ſaid *H. W.* before *T. W.* eſq; then one of the juſtices of our ſaid lord the now king aſſigned to keep the peace of our ſaid lord the now king, in and for the county of *Stafford* aforeſaid, then inhabiting at *Haywood* in the pariſh of *Colwick* within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, was examined upon his corporal oath, according to the form of the ſtatute in that caſe made and provided, and the ſaid *H. W.* upon his ſaid oath before the ſaid *T. W.* then and there ſaid, that he did not know the parties who had committed the aforeſaid robbery, or either of them; and after the felony and robbery upon him made as aforeſaid, and after the ſaid public notice given of the aforeſaid robbery in the aforeſaid *London Gazette*, 40 days of the ſuing forth of the ſaid original writ of the ſaid *H.* were paſt; yet the ſaid inhabitants of the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, have not hitherto made to the ſaid *H. W.* ſatisfaction for the robbery and damages aforeſaid, nor the bodies of the felons and malefactors aforeſaid, nor the bodies of either of them, have taken, nor for the bodies of them, nor for the bodies of either of them hitherto have anſwered, but the ſame

Stat. 27 Eliz. c. 13. §. 11.

felons

felons and malefactors have permitted to escape, in contempt of the said lord the now king, and to the great damage of him the said *H. W.* and against the said form of the statute aforesaid in the aforesaid 13th year of the reign of the said late lord king *Edward* I. in such case made and provided; and whereupon the said *H.* who as well for the said lord the now king as for himself in this behalf sues, by *R. D.* his attorney complaineth, that certain robbers, *to wit*, two men, to the same *H. W.* unknown, on the aforesaid 5th day of *May* in the aforesaid 10th year of the reign of the said lord the now king, in the king's highway within the hundred of *Pirehill* aforesaid in the county of *Stafford* aforesaid, *to wit*, at a certain place near *Weston* aforesaid, commonly called *Wodden Lane*, between *Weston* and *Amerton* in the parish of *Weston* in the said county of *Stafford*, within the hundred of *Pirehill* aforesaid in the county of *Stafford* aforesaid, with force and arms, *to wit*, with pistols, swords, staves and knives, in and upon him the aforesaid *H.* did make an assault, and 25 *l.* in money of lawful money of *Great Britain*, of the proper monies of him the said *H. W.* and also a leather purse value 6 *d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the said *H. W.* then and there found, of and from the said *H.* did feloniously take and rob and carry away, against the peace of our said lord the now king, *&c.* And the said *H.* immediately after the felony and robbery aforesaid done,

done, *to wit*, on the ſaid 5th day of *May* in the 10th year of the reign of the ſaid lord the now king aforeſaid, at *Wodden Lane* aforeſaid in the ſaid pariſh of *Weſton* within the hundred of *Pirehill* aforeſaid in the county aforeſaid, which ſaid place called *Wodden Lane* is, and then was near the ſaid place where the ſaid felony and robbery ſo as aforeſaid was committed, did make hue and cry of the felony and robbery aforeſaid upon him made, and then and there give notice to the inhabitants of the ſaid pariſh of *Weſton* of the ſame felony and robbery; and did alſo, with ſo much convenient ſpeed as might be after the aforeſaid robbery on him committed as aforeſaid, that is to ſay, on the ſaid 6th day of *May* in the 10th year aforeſaid, give notice thereof to *T. W.* then a conſtable of the ſaid pariſh of *Weſton* aforeſaid in the ſaid hundred of *Pirehill*, being near unto the place where the ſaid robbery was committed as aforeſaid; and did deſcribe in the aforeſaid notice to the aforeſaid conſtable, ſo far as the nature and circumſtances of the caſe did admit, the ſaid felons and the time and place of the aforeſaid robbery; and did alſo, within the ſpace of 20 days next after the aforeſaid robbery committed, cauſe public notice to be given thereof in the *London Gazette*, and did therein likewiſe deſcribe, ſo far as the nature and circumſtances of the ſaid caſe did admit, the ſaid felons and the time and place of the aforeſaid robbery, together with the ſaid money, goods and effects whereof he the ſaid *H.* was robbed as aforeſaid, and

after-

afterwards, and before the ſuing forth of the original writ of him the ſaid *H. to wit*, on the 15th day of *October* in the 11th year of the reign of the ſaid lord the now king aboveſaid, he the ſaid *H.* went before the ſheriff of the county of *Stafford* aforeſaid, and did then before the ſame ſheriff enter into a bond unto *T. B.* and *J. C.* high conſtables of the hundred of *Pirehill* aforeſaid, in the penal ſum of 100 *l.* with two ſufficient ſureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the ſame place, carpenter, approved by the ſaid ſheriff, with the condition for ſecuring to the ſaid high conſtables the due payment of their coſts, after the ſame ſhould be taxed by the proper officer, in caſe that he the ſaid *H. W.* ſhould happen to be nonſuited, or ſhould diſcontinue his action to be brought againſt the ſaid inhabitants of the hundred of *Pirehill* aforeſaid on account of the aforeſaid robbery, or in caſe that judgment ſhould be given againſt him the ſaid *H. W.* on demurrer, or that a verdict ſhould be given againſt him therein, according to the form and direction of the ſtatute in ſuch caſe lately made and provided; and after the felony and robbery aforeſaid done, and within 20 days next before the day of the ſuing forth of the original writ of him the ſaid *H. W. to wit*, on the aforeſaid 15th day of *October* in the 11th year of the reign of our ſaid lord the now king aboveſaid, he the ſaid *H. W.* before the ſaid *T. W.* eſq; then one of the juſtices of the ſaid lord the now king, aſſigned to keep the

the peace of the ſame lord the now king in and for the county of *Stafford* aforeſaid, then inhabiting at *Haywood* in the pariſh of *Colwick* within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, was examined upon his corporal oath, according to the form of the ſtatute in that caſe made and provided; and the ſaid *W. H.* upon his ſaid oath then and there before the ſaid *T. W.* ſaid, that he did not know the parties who had committed the aforeſaid robbery, or either of them, and after the felony and robbery upon him made as aforeſaid, and after the ſaid public notice given of the aforeſaid robbery in the aforeſaid *London Gazette*, 40 days of the day of ſuing forth of the ſaid original writ of the ſaid *H.* were paſt; *Yet* the ſaid inhabitants of the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid have not hitherto made to the ſaid *H. W.* ſatisfaction for the robbery and damages aforeſaid, nor the bodies of the ſaid felons and malefactors aforeſaid, nor the bodies of either of them have taken, nor for the bodies of them, nor for the bodies of either of them, hitherto have anſwered, but the ſame felons and malefactors have permitted to eſcape, in contempt of the ſaid lord the now king, and to the great damage of him the ſaid *H. W.* againſt the form of the ſtatute aforeſaid, in the aforeſaid 13th year of the reign of the ſaid late lord king *Edward* the firſt in ſuch caſe made and provided; whereupon the ſaid *H. W.* who as well for the ſaid lord the now king as for himſelf ſueth, ſaith that he is injured

Vide ſtat. 22 Geo. 2. c. 24, 46.

injured and hath damage to the value of 40*l.* and thereof he bringeth ſuit, *&c.*

And the ſaid inhabitants in the hundred of *Pirehill* by *H. D.* their attorney come and defend the force and injury, when, *&c.* and ſay, that they are no wiſe guilty of the premiſſes above laid to their charge, as the ſaid *H. W.* who as well, *&c.* above complaineth againſt them: And of this they put themſelves upon the country; and the ſaid *H. W.* who as well, *&c.* doth likewiſe the ſame: And thereupon the ſame *H. W.* ſaith, that the inhabitants in the hundred of *Pirehill* aforeſaid where the ſaid robbery was committed are parties defendants, againſt whom the ſaid *H. W.* who as well, *&c.* above in form aforeſaid complaineth, and for that cauſe craveth the writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe to come twelve, *&c.* of the vicinity of the hundred of *Offlow* in the county aforeſaid, which ſaid hundred of *Offlow* is the next hundred in the ſame county adjacent to the aforeſaid hundred of *Pirehill*, to try the iſſue aforeſaid above in form aforeſaid joined: And becauſe the ſaid inhabitants in the aforeſaid hundred of *Pirehill* do not deny this, it is granted to him; therefore the ſheriff is commanded, that he cauſe to come here in eight days of the Purification of the bleſſed Virgin *Mary* twelve, *&c.* of the vicinity of the hundred of *Offlow*, by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Plea, Not guilty.

Iſſue. Venire *of the next adjacent hundred.*

Debt. Qui tam *for keeping a greyhound and killing a hare not being qualified.*

Kent, *to wit*, *E. L.* late, *&c.* was ſummoned to anſwer to the poor of the ſaid pariſh of *E.* in the county aforeſaid, and to Sir *J. S.* bart. who ſueth in this behalf as well for himſelf as for the ſaid poor of the ſaid pariſh of *E.* aforeſaid of a plea, that he render to the ſaid poor and the ſaid *J. S.* who ſueth as aforeſaid, 10*l.* of lawful money of *Great Britain*, which he oweth to, and unjuſtly detaineth from them, *&c.* And thereupon the ſaid Sir *J.* who ſueth as aforeſaid by *H. C.* his attorney ſaith, that the ſaid *E.* on the 13th day of *March* in the year of our lord 1736, at and in the pariſh of *E.* aforeſaid did keep a certain greyhound for the deſtruction of the game of this kingdom, he the ſaid *E.* then not being a perſon qualified by the laws of this realm to keep a greyhound for the deſtruction of the game, againſt the form of the ſtatute in ſuch caſe made and provided, whereby, and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the ſaid poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and have of the ſaid *E.* for his ſaid offence 5*l.* parcel of the ſaid 10*l.* and the ſaid Sir *J.* who ſueth as aforeſaid, further ſaith, that the ſaid *E.* on the 30th day of *March* in the year aforeſaid in the ſaid pariſh of *E.* in the county aforeſaid, did with a certain greyhound kill one hare, he the ſaid *E.* then not being a perſon qualified to kill game, againſt the form of the ſtatute in ſuch caſe lately made

made and provided, whereby, and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the ſaid poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and have of the ſaid *E.* for his ſaid laſt mentioned offence 5*l.* reſidue of the ſaid 10*l.* Yet the ſaid *E.* (although often requeſted) hath not yet paid the ſaid 10*l.* or any part thereof, to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, or to either of them; but he to pay the ſame to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, hitherto wholly hath refuſed and ſtill doth refuſe to the ſaid Sir *J.* who ſueth as aforeſaid his damage of 10*l.* and thereof as well for the ſaid poor as for himſelf he bringeth ſuit, *&c.*

And the ſaid *E. L.* by *R. P.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith that he doth not owe to the ſaid Sir *J.* who as well, *&c.* the ſaid ſum of 10*l.* or any part thereof, in manner and form as the ſaid Sir *J.* who as well, *&c.* above thereof complaineth againſt him: And of this he putteth himſelf upon the country; and the ſaid Sir *J.* who ſueth as aforeſaid, doth likewiſe the ſame; therefore, *&c.* *Plea,* Nil debet.

And the ſaid Sir *J. S.* although ſolemnly called came not, nor hath entered his ſaid iſſue, nor hath further proſecuted his writ: Therefore he and his pledges of proſecution are thereupon amerced, *&c.* and the names of the pledges of the ſaid Sir *J.* are, *&c.* and that the ſaid *E. L.* depart without day, *&c.* *Judgment for not entering iſſue.*

&c. It is alſo conſidered, that the ſaid *E.* do recover againſt the aforeſaid Sir *J.* his damages by reaſon of the premiſſes, to 3*l.* 16*s.* 8*d.* to the ſaid *E.* by the diſcretion of the juſtices here adjudged at his requeſt for his coſts and charges in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided.

Declaration for ſhooting a greyhound.

Leiceſterſhire, *to wit*, *H. R.* late, *&c.* was attached to anſwer *B. D.* in a plea, wherefore with force and arms a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* at *M.* aforeſaid in the county aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch, and certain young whelps, *to wit*, five young whelps of the ſaid other bitch, which died for want of the ſaid bitches to ſuckle them, *to wit*, at *M.* aforeſaid; and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* lately found at *M.* aforeſaid, of the price of 10*l.* he ſhot at, hit, ſtruck, ſmote and wounded, by means whereof the laſt mentioned two bitches afterwards at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the ſaid two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five other young whelps of the ſaid laſt mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards died

died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid; and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſovereign lord the king that now is, *&c.* And whereupon the ſaid *B.* by *J. B.* his attorney complaineth, that the ſaid *H.* on the 15th day of *January* in the year of our lord 1736, with force and arms, *&c.* a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* then found at *M.* aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch; and certain young whelps, *to wit*, five young whelps of the other of the ſaid bitches, which afterwards, *to wit*, the ſame day and year at *M.* aforeſaid died for want of the ſaid bitches to ſuckle them; and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* then found at *M.* aforeſaid of the price of 10*l.* ſhot at, hit, ſtruck, ſmote and wounded; by means whereof the laſt mentioned two bitches afterwards, *to wit*, the ſame day and year at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five young whelps of the laſt mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards, *to wit*, the ſame day and year died for want of the two

laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſaid ſovereign lord the king that now is, whereby the ſaid *B.* ſaith that he is injured and damnified, to the value of 10*l.* and thereof he bringeth ſuit, *&c.*

Plea, Defendant juſtifies as keeper of a park.

And the aforeſaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury, when, *&c.* And as to the coming with force and arms, and the whole treſpaſs aforeſaid above ſuppoſed to be done, except the ſhooting at, and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, ſaith that he is not guilty: And of this he putteth himſelf upon the country;

Firſt iſſue.

and the ſaid *B.* likewiſe, *&c.* And as to the ſhooting at, and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned above ſuppoſed to be done, the aforeſaid *H.* ſaith, that the ſaid *B.* ought not to have his aforeſaid action thereof againſt him becauſe he ſaith, that Sir *W. D.* bart long before the ſaid time, when, *&c.* and at the ſame time, when, *&c.* was, and ſtill is poſſeſſed of and in a certain antient park called *B.* park in *M.* aforeſaid; in which ſaid park, long before the ſaid time, when, *&c.* and at the ſaid time, when, *&c.* were great numbers of deer; of which park the aforeſaid *H.* before the ſaid time, when, *&c.* and at the ſaid time, when, *&c.* was keeper and had the care and cuſtody thereof. And the ſaid Sir *W.* being ſo as aforeſaid poſſeſſed

of the ſaid park, the ſaid greyhound bitch at diverſe times before the ſaid time, when, &c. was uſed to haunt the ſaid park, and to hunt, chaſe and drive the ſaid deer, in order to bite, wound and kill them, to the great hurt and damage of the ſaid deer; and at the ſaid time, when, &c. was in the aforeſaid park for the purpoſe aforeſaid; whereupon the aforeſaid *H.* as keeper and ſervant of the aforeſaid Sir *W.* and by his command, at the ſaid time, when, &c. in the ſaid park, for the preſervation of the ſaid deer, there did ſhoot at, and kill the ſaid greyhound bitch there, as it was lawful for him to do, which is the ſame ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, whereof the ſaid *B.* doth above in that behalf complain againſt him: And this he is ready to verify: Whereupon he prayeth judgment, if the ſaid *B.* ought to have his aforeſaid action thereof againſt him, &c.

Plea to a prohibition.

And the ſaid *T. K.* by *C. G.* his attorney cometh and defendeth the force and injury, when, &c. and ſaith, that he did not proſecute or follow his ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R. R.* againſt the prohibition of our ſaid lord the king to him directed and delivered in manner and form as the ſaid *R.* who ſueth as well for the king as for himſelf, by his writ and declaration aforeſaid hath above ſuppoſed: And of this he putteth himſelf upon the country; and the ſaid *R.* who as well, &c. likewiſe, &c. And for the obtaining the writ of our lord

Firſt iſſue.

the king of conſultation in this behalf, he the ſaid *T.* ſaith, that long before the proſecution of the ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R.* he the ſaid *T.* was and now is ſeiſed of a certain antient meſuage with the appurtenances, in *Park-Lane* in *Towceſter* aforeſaid, in his demeſne as of fee, and that the ſaid pew in the ſaid church of *Towceſter* in the ſaid declaration mentioned, was and is an antient pew, without the addition of any ſeat or form in the ſaid church within the memory of man taken in or made parcel of the ſaid pew; and that he the ſaid *T.* and all thoſe whoſe eſtate he hath in the ſaid meſuage with the appurtenances, and their tenants thereof, from the time whereof the memory of man is not to the contrary, have and hath ſuſtained, amended and repaired the ſaid pew as often as need required, at his and their own proper coſts, and by reaſon thereof from the time aforeſaid he and they, and ſuch other perſon and perſons as he and they hath and have from time to time licenſed to ſit therein, hath and have uſed and been accuſtomed to ſit therein to hear divine ſervice and preaching the word of God in the ſaid church as in a pew belonging to the ſaid meſuage with the appurtenances, ſo that no other perſon from the time aforeſaid in time of divine ſervice and preaching the word of God in the ſaid church, hath had any ſeat or place in the ſaid pew without the licence or againſt the will of the ſaid *T.* or of thoſe whoſe eſtate he hath in the ſaid meſuage with the appur-

appurtenances, or of his or their tenants thereof for the time being, neither could or ought ſuch other perſon to ſit therein, otherwiſe than by ſuch licence as aforeſaid. And the ſaid *T.* ſaith, that he being ſo ſeiſed of, and dwelling in the ſaid meſuage with the appurtenances, the ſaid *R.* who as well, *&c.* before the ſaid proſecution in the ſaid ſpiritual court, *to wit*, on the firſt day of *April* in the year of our lord 1733. in time of divine ſervice in the ſaid church, without the licence and againſt the will of the ſaid *T.* did intrude himſelf into the ſaid pew, and diſturbed him the ſaid *T.* and his family and friends then and there being by and with the licence of him the ſaid *T.* wherefore he the ſaid *T.* for remedy in that behalf, before the prohibition of our ſaid lord the king to the contrary thereof to him directed was delivered, did inſtitute his ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R.* as it was lawful for him to do; without that, that he the ſaid *R.* who as well, *&c.* and all thoſe whoſe eſtate he had and hath in the ſaid antient meſuage in the ſaid declaration mentioned to be then, or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own coſts repaired one ſeat or form in the ſaid church lately taken in, and made parcel of a pew in the ſaid church, and therefore have had and uſed for themſelves and family inhabiting in the ſaid meſuage the ſole and ſeparate uſe of the ſaid ſeat or form

form for the hearing and attending of divine ſervice in the ſaid church in manner and form as the ſaid *R.* who as well, *&c.* by his ſaid declaration hath ſuppoſed: And this the ſaid *T.* is ready to verify, with this alſo, that the ſaid *T.* will verify, that the pew in the ſaid declaration mentioned, and the pew in the plea of him the ſaid *T.* beforementioned, is one and the ſame pew, and not different: Wherefore he prayeth judgment, and the writ of our ſaid lord the king of conſultation in this behalf to be granted unto him.

Replication in prohibition.

And the ſaid *R. R.* ſaith, that the ſaid *T. K.* ought not, for the reaſon by him alledged, to have his ſaid majeſty's writ of conſultation in this behalf, becauſe he ſaith, as before, that he the ſaid *R.* who as well, *&c.* and all thoſe whoſe eſtate he had and hath in the ſaid ancient meſuage in the ſaid declaration mentioned to be then or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own coſts repaired one ſeat or form in the ſaid church lately taken in and made parcel of a pew in the ſaid church, and therefore have had and uſed for themſelves and family inhabiting in the ſaid meſuage the ſole and ſeparate uſe of the ſaid ſeat or form for the hearing and attending of divine ſervice in the ſaid church, in manner and form as the ſaid *R.* who as well, *&c.* by his ſaid declaration hath alledged:

ledged: And this he prayeth may be inquired of by the country; and the ſaid *F. K.* doth the ſame: Therefore as well to try the ſaid iſſue, as the aforeſaid other iſſue between the ſaid parties above joined, the ſheriff is commanded, *&c.* *Vide antea fol.*

And the ſaid *H.* by *G. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and prayeth the hearing of the ſaid writing obligatory, and it is read to him, in theſe words, *to wit*, Know all men, *&c.* [*the obligation*] and he prays alſo the hearing of the condition of the ſaid writing obligatory, and it is read to him in theſe words, *to wit*, [*here enter the condition*] which being read and heard, he the ſaid *H.* ſaith, that he by virtue of the ſaid writing obligatory ought not to be charged with the ſaid debt, becauſe he ſaith, that after the 29th day of *September* in the year of our lord 1664. and before the making the ſaid writing obligatory, *to wit*, on the ſaid firſt day of *July* in the ſaid year of our lord 1733. at *Weſtminſter* aforeſaid, he the ſaid *H.* played with the ſaid *S.* at a certain play with dice called *Hazard*, for diverſe ſums of money exceeding the ſum of 100*l.* upon tick and credit, and not for ready money; and that he the ſaid *H.* ſo playing with the ſaid *S.* at the ſaid play, then and there at one and the ſame time and meeting loſt upon credit to and with the ſaid *S.* in the whole a great ſum of money, exceeding the ſum of 100*l.* *to wit*, the ſum of 500*l.* whereof no

Plea to a bond that it was given for money won at play.

Stat. 16 Car. 2. c. 7.

no part was then paid by the ſaid *H.* And the ſaid *H.* afterwards thereupon, *to wit*, on the ſaid firſt day of *July* in the year of our lord 1733. aforeſaid at *Weſtminſter* aforeſaid, made and delivered the aforeſaid writing obligatory with the aforeſaid condition thereto ſubſcribed for the ſecuring the payment of the ſaid 500*l.* by him the ſaid *H.* ſo loſt; and by the ſaid *S.* ſo as aforeſaid at the ſaid play won of the ſaid *H.* at one and the ſame time and meeting, upon credit; whereby by force of the ſtatute in ſuch caſe made and provided the ſaid writing obligatory wholly became and is void, and of no effect in law: And this he is ready to verify: Wherefore he prayeth judgment, whether he ought to be charged with the ſaid debt by virtue of the ſaid writing obligatory, *&c.*

Replication. And the ſaid *S.* ſaith, that by reaſon of any thing above by the ſaid *H.* in pleading alledged, he ought not to be barred from having his ſaid action againſt him, becauſe he ſaith, that the ſaid bond was not given for ſecuring the payment of money won at the ſaid play by the ſaid *S.* of the ſaid *H.* as the ſaid *H.* hath above pleaded: And this he prayeth may be inquired of by the country; and the ſaid *H.* likewiſe; therefore, *&c.*

Award of Venire, *and writ of inquiry, where two defendants appear* And the ſaid *N.* and *I.* by *J. H.* their attorney come and defend the force and injury, when, *&c.* and ſay, that they did not undertake in manner and form as the ſaid *J.* above

above complaineth againſt them: And of this they put themſelves upon the country; and the ſaid *J.* likewiſe: And the ſaid *M.* by *H. K.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the aforeſaid action of the aforeſaid *J.* whereby the ſaid *J.* remaineth undefended by the ſaid *M.* by reaſon whereof the ſaid *J.* ought to recover againſt the ſaid *M.* his damages, occaſioned by the non-performance of his ſaid promiſes and undertakings, but becauſe it is not known whether or no the ſaid *N.* and *I.* will be convicted of the premiſſes; and if they ſhall be convicted, it is convenient and neceſſary that there ſhould be only *one taxation* of damages for the whole premiſſes in one writ ſpecified; and thoſe damages ought to be ſettled by a jury of the country in that behalf; and that the writ of inquiry of damages aforeſaid againſt the ſaid *M.* be ſtayed, until the ſaid iſſue as aforeſaid between the ſaid *J.* and the ſaid *N.* and *I.* ſhall be determined; therefore, as well to try the iſſue between the ſaid *J.* and the ſaid *N.* and *I.* above joined, as alſo to inquire what damages the ſaid *J.* hath ſuſtained by occaſion of the premiſſes aforeſaid, the ſheriff is commanded that he cauſe to come here 12 free and lawful men of the body of his county, *&c.* by whom, *&c.* and who are not related to the ſaid *N. I.* or *M.* or the ſaid *J.* to recognize, *&c.* becauſe as well, *&c.*

and one lets judgment go by default.

Eaſter

Eaſter *term*, &c.

Middleſex, *to wit*, R. *S.* of, *&c.* was attached to anſwer *R. T.* and *P. L.* in a plea of treſpaſs upon the caſe, to their damage of 43 *l.* *Roll* 1022.

Afterwards, *to wit*, the 25th day of *July* in the 13th year of the reign of our lord the king that now is, the aforeſaid *R. T.* and *P. L.* come by *H. P.* their attorney conſtituted by a ſpecial warrant to him in that behalf, before Sir *J. W.* knt. ch. juſt. of our ſaid ſovereign lord the king of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, and acknowledged that they were ſatisfied of the aforeſaid damages: Therefore let the ſaid *R. S.* be diſcharged of thoſe damages.

Acknowledged the 25th day of July 1739, *at* Serjeants Inn, *before me*

J. W.

A

Rule or *Meaſure* of COSTS.

WRITS.

	l.	*s.*	*d.*
Capias into *London*	0	9	6
into any other county	0	10	6
Capias by continuance into *London*	0	8	6
into any other county	0	9	6
Teſtatum capias	0	8	6
Non omittas capias	0	9	8
Attachment of contempt	0	7	9
Attachment proper	0	7	6
Teſtatum attachment	0	10	0
Venire	0	7	9
Habeas corpora	0	8	6
Subpœna ducens tecum	0	7	6
Common *Subpœna*	0	6	6
Drawing and ingroſſing *Scire facias per* ſheet each	0	0	8
beſides fee	0	6	8
Special original, *per* ſheet	0	0	8
Fee	0	6	8
Drawing and ingroſſing writ of inquiry, *per* ſheet	0	0	4
Fee	0	3	4
Habeas corpus fee	0	6	8

Writ

	l.	*s.*	*d.*
Writ of poſſeſſion fee 3 *s.* 4 *d.* Making the writ 1 *s.* 8 *d.*	0	5	0
Superſedeas	0	8	9
Fi. fa. and *Ca. ſa.* each	0	6	9
Teſtatum Fi. fa. and *Ca. ſa.* each	0	10	0

ARRESTS, *&c.*

Serving proceſs	0	5	0
Arreſts	0	10	0

Nothing more to be allowed for extraordinary expence and trouble, even between attorney and client, except it be by the client's expreſs order.

Serving notice of declaration, or executing a writ of inquiry (if under 20 miles) 3 *d. per* mile to and from the place, *i. e.* 6 *d. per* mile in the whole.

The like allowance in caſe of conduct money.

If above 20 miles, for a neighbouring attorney	0	10	6

To allow 1 *s.* 4 *d.* for every defendant the plaintiff appears for, over and above the 5 *s.* 4 *d.* allowed for the firſt defendant.

Entring appearance between attorney and client	0	5	4
Copies of affidavits in order to ſhew cauſe, *per* ſheet	0	0	4

ACTIONS

ACTIONS *on judgments or ſtatutes.*

	l.	*s.*	*d.*
Drawing, *per* ſheet	0	0	8
Copying	0	0	8
Entring	0	0	8
Term fee	0	6	8

ISSUES, *&c.*

Drawing iſſue, *per* ſheet	0	0	4
Drawing forejudger 2 *s.* ingroſſing the whole, *per* ſheet	0	0	4
Drawing and ingroſſing affidavit, *per* ſheet	0	0	8
Drawing judgment 2 *s.* ingroſſing the whole, *per* ſheet	0	0	4

Preparing for TRIAL.

Paſſing record	0	6	8
Town witneſſes (if the charge exceeds 40 *s.* allowed in common coſts) *per diem*	0	2	6
Country witneſſes, *per diem*	0	5	0
Attending the trial every day 6 *s.* 8 *d.* and on the day of trial, between attorney and client	0	13	4
If between party and party, in the whole	0	13	4

BAIL-BONDS.

Common coſts in the ſheriff's name	2	10	0
On an aſſignment, if 12 ſheets judgment by *Nil dicit*	4	10	6
For every three ſheets more	0	10	0

	l.	*s. d.*
If the plaintiff enter appearance for defendant, more	1	0 0
On *Comper' ad diem*, the old way	3	10 0
On the new way	5	10 0
For every 3 ſheets above 12 in a declaration	0	10 0

Demurrers.

Concilium and attendance	0	13	10
Argument and attendance	1	7	8
Ulterius concilium	1	7	0

Beſides rules and ſervice.

Non Pros.

For not declaring where appearance	1	13	4
With bail, more	0	10	0
For not replying	2	13	4
If bail more	0	10	0
For not joining in demurrer to declaration	3	6	8
Bail, more	0	10	0
And for every other pleading more, if ſhort	1	0	0
For not entering iſſue	3	3	4
Bail more	0	10	0
For every count more than the firſt	0	3	0

Cogn' Dampn'.

1. Narr' the ſame	5	0	0
Of different terms	5	10	0
Every Narr' more	0	10	0
With bail more	0	10	0

By

By DEFAULT.

	l.	*s.*	*d.*
Inquiry 1 Narr'	7	10	0
Every Narr' more	0	10	0
If plaintiff enters appearance	1	0	0
If in treſpaſs and impriſonment, aſſault, *&c.*	7	16	8
If plaintiff enters appearance	8	16	8

TRIALS.

Common coſts 1 count	14	10	0
For every count more	0	10	0
For treſpaſs, aſſault or impriſonment, 5 ſheets or under	14	16	8
Every three ſheets more	0	10	0
In ejectment, one demiſe	15	16	8
Every demiſe more	0	10	0
Common coſts for not confeſſing leaſe, entry and ouſter on the rule	16	16	8
Attending taxing coſts, though many cauſes in a bill, only conſidered as one cauſe, ſo only	0	3	4

OBSERVATIONS.

1. Nothing for attending a ſheriff or marſhal in any caſe.

2. Declaration where *Habeas corpus* is brought to follow the office the *Habeas corpus* is ſigned in.

3. No attorney to be privileged in any ſuit, unleſs it appears on the face of the declaration that he ſues for fees; other counts

not for fees to be paid for; and no privilege where he is defendant, either as to appearance or pleading.

4. No declaration to be allowed if the plaintiff be ſummoned the day before the return; but if ſerved upon the return-day, then declaration and entry to be allowed if declaration produced.

5. No maps to be allowed on trials *inter partes*.

6. No wrong or under-charge to be ſupplied in any manner, except in fee for paſſing record when only charged 3 *s.* 4 *d.* inſtead of 6 *s.* 8 *d.*

Of the duty and fees of the ſheriff of Middleſex, *his under-ſheriff*, &c.

IT is the duty of the ſheriff of *Middleſex*, by himſelf and deputies, to attend all his majeſty's courts, judges, juſtices and commiſſioners within his county; and to execute all writs and proceſſes by them and every of them directed to him; and alſo to hold his county-courts, tourns and court leets within the ſame.

The ſheriff of *Middleſex*, who are alſo ſheriffs of *London*, is nominated by the citizens thereof; and are, as ſheriffs of *London*, at much greater expence in paſſing through their office than the ſheriff of any other county in *England*; and therefore oblig their under-ſheriff of *Middleſex*, out of the fees and profits ariſing from that office, to advance money from time to time to pay a reward

rewards payable by the ſaid ſheriff for apprehending highwaymen and other malefactors, which are given by ſeveral acts of parliament, and to pay the wages of the juſtices of peace attending at the ſeveral ſeſſions of the peace for the ſaid county of *Middleſex*, and to bear part of the expence of the entertainments at the ſeſſions of gaol-delivery held in the *Old-baily*, *London*, for the county of *Middleſex*, which, together with other charges incident to the ſaid office, amounts annually at leaſt to the ſum of 450*l.* For the diſpatch of the buſineſs of the county he keeps his office at *Furnival's Inn*, *Holborn*, wherein, beſides his own attendance, three clerks are daily imployed (*Sundays* and holidays excepted); they have no ſalary nor wages, but the allowance hereafter mentioned, out of the fees. And in conſideration of his giving ſecurity to the ſaid ſheriff in the ſum of 12,000*l.* to indemnify him from all damages and loſſes that may happen from the miſtake, omiſſion or miſdemeanor of him, his deputies, clerks or bailiffs, the ſheriff hath granted to him all the lawful fees, profits and perquiſites belonging to the ſaid office; and in virtue thereof he claims the ſeveral fees and ſums of money hereafter mentioned, which are all the fees belonging to the ſaid office, except what may be claimed by the county clerk.

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
To the charge of paſſing the ſheriff's accounts for *Middleſex* in the *Exchequer* by Stat. 3 *Geo.* 2.	119	3	0						
Of every bailiff, when admitted into his office, in lieu of all fees due to the ſheriff on arreſts that may come to his hands, except fees on executions (commonly called *poundage.*)	6	10	0						
Of every bailiff more for his indenture of covenants and bond to perform the ſame, and attending the execution thereof				1	1	6			
For every warrant on a bill of *Middleſex Capias* or *Quo minus*	0	0	4						
For every name more than one				0	0	4			
For every warrant on a ſpecial *Capias* or *Quo minus*, *i. e.* containing the whole declaration	0	0	4	0	2	0	0	2	4
For every warrant on a writ of *Scire facias*, extent, *Elegit*, ſummons againſt privileged perſons, original in real or perſonal actions, *Pone*, *Ven. facias* out of the exchequer, attachment for the peace out of the crown-office, *Diſtringas*, writ of poſſeſſion, *Capias excommunication*, *Ne exeat regno*, *Supplicavit*, and *Capias ſi laicus*				0	2	4			
For every bail-bond taken in the office, (which rarely happens, the bond being uſually taken from defendants in cuſtody, by the bailiff,) for ſearching the office and making a *Superſedeas* to ſet the defendant at liberty				0	9	4			
For taking ſecurity on a writ of *Ne exeat regno*; ſearching the office, and *Superſedeas* to ſet the defendant at liberty				1	1	0			

For

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For a bond on an attachment *pro pace* out of the crown-office				0	2	4			
For taking ſecurity on a writ of *Supplicavit*, which rarely happens, ſearching the office, and for a *Superſedeas* to ſet the defendant at liberty				0	10	6			
For the aſſignment of every bail bond	0	2	4						
For the plaintiff's diſcharge for the ſame	0	2	4	0	5	0			
For the return of the writ	0	0	4						
For the delivering up of a bail-bond back to the deft. by the plt's order				0	5	0			
Fees for returns of writs									
For allowing every writ of *Habeas corpus cum cauſa*	0	4	8						
For the return thereof, if but one writ to be returned againſt the defendant	0	2	4						
	0	2	0	0	7	4	0	9	4
For a warrant to the bailiff to conduct the defendant before the judge or court, as the writ is returned	0	2	4						
For every other writ againſt the defendant returned thereon	0	2	0	0	0	4	0	2	4
If the defendant is in the gaol, then for a warrant to the keeper to deliver the defendant to the bailiff				0	2	4			
For executing a writ of inquiry of damages and return of the inquiſition thereon	0	10	0	0	3	4			
To the bailiff for ſummoning and ſwearing the jury	0	4	0						
For the uſe of the court houſe or room where the writ is executed	0	1	0				1	10	4
To the jurors, each 1 *s.*	0	12	0						
	0	17	0						
For ſwearing each witneſs				0	0	4			

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For taking an inquiſition on a *Capias utlagatum*, Schedule of the goods ſeiſed and return thereof		0 18 6	
To the bailiff for ſummoning the jury	0 4 0		
To the uſe of the room where the inquiſition is taken	0 1 0		1 15 6
To the jurymen, each 1 *s.*	0 12 0		
	0 17 0		
If more than one finding for every other		0 3 4	
The like on extents		0 18 6	
For every finding, if more than one, each		0 3 4	
Attending each adjournment		0 10 0	
For a ſummons for a witneſs to give evidence		0 2 0	
For taking an inquiſition on a *Scire fieri* inquiry, inquiſition and return thereof	0 10 0	0 8 6	0 18
For the return of a *Cepi corpus* or *Non invent.* on every bill of *Middleſex*, *Capias*, *Quo minus*, *Capias ad ſatisfaciendum*, and *Capias utlagatum*, if no inquiſition taken		0 0 4	
For the like return, if by a bailiff of a liberty		0 0 8	
Return of *Iſtud breve*		0 0 4	
For returning *Fieri feci* on a *Fieri facias*		0 2 0	
If by the bailiff of a liberty		0 4 0	
For returning *Nulla bona* thereon		0 1 0	
If by the bailiff of a liberty		0 2 0	
For ſpecial returns, ſuch as reſcue, defendant diſcharged by *Superſedeas*, or committed to the *Fleet* or *King's bench* priſon on a writ of *Habeas corpus*		0 2 4	
For the return of *Venditioni exponas*		0 2 0	
For the return of *Scire feci*, each name		0 2 0	

For

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For the return of *Nihil* or *Mortuus* on a *Scire facias*				0	1	0			
For the return of an eſcape warrant				0	2	0			
For the return of a *Venire facias*, ſummons againſt privileged perſons, or original, that the deft. is ſummoned				0	2	0			
For the return of a *Nihil* thereon				0	1	0			
For the return of *Non invent.* on an attachment out of the courts of *Chancery*, *Exchequer*, or dutchy of *Lancaſter*				0	1	0			
For the return of a *Cepi corpus* thereon				0	2	0			
For the return of *Non invent.* on a proclamation out of the courts of *Chancery*, *Exchequer*, or dutchy of *Lancaſter*				0	2	0			
For the allowance of every writ of *Superſedeas* or reſtitution	0	2	0	0	0	4	0	2	4
For a warrant thereon to diſcharge the defendant's body or goods out of cuſtody				0	2	4			
For the return of a writ of *Venire facias juratores*, with the panel of 48 freeholders names thereto annexed	0	2	0						
For the return of a writ of *Diſtringas* or *Habeas corpora*, with a panel of 48 freeholders names annexed thereto	0	12	0						

N. B. The ſheriff makes up a panel of 48 jurymen for each court in *Weſtminſter-hall* every term, but before he can do that by his officer, he inquires after a competent number of perſons names taken out of the freeholders book for that purpoſe; makes out a warrant to his bailiffs to ſummon them; delivers a panel to the marſhal of each chief juſtice or chief baron; attends the court by himſelf or deputy during each ſeſſions of *Niſi prius*, and after term enters the names of each juryman in an alphabetical regiſter, and gives certificates to each juryman of his attendance (if required); for all which no fee is claimed or taken.

For

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For the return of a writ of poſſeſſion				0	2	0			
Attending the maſter of the *King's bench* office, prothonotary of the court of *Common Pleas*, or deputy remembrancer of the court of *Exchequer*, from the plaintiff and defendant, each one guinea	2	2	0						
For attending with the jury on a view, and certifying to the court that the view has been had, the ſame fee as is paid to each juryman									
For attending every trial at bar, or at *Niſi prius*, where a ſpecial jury is ſummoned, the ſame fee as is given to each juryman after the trial									
N. B. The laſt mentioned fee is taken by the under-ſheriff or clerk who attends the trial.									
For every warrant to a bailiff to ſummon a ſpecial jury				0	2	4			
Fees called poundage.									
For taking a defendant in execution, or levying the goods, for every ſum of money not exceeding 100 *l.* for every 20 *s.* thereof	0	1	0						
For every 20 *s.* exceeding that ſum	0	0	6						
For the like on an extent, *Fieri facias*, or *Capias ad ſatisfaciendum* at the ſuit of the king	0	1	6						
For every 20 *s.* after the firſt 100 *l.*	0	1	0						
For every 20 *s.* levied on a *Levari facias* the ſummons of the pipe or green wax (except poſt fines)	0	1	0						
For executing every writ of poſſeſſion for every 20 *s.* of the yearly value of the premiſſes, of which poſſeſſion is given	0	1	0						

For

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For the return of a precept to ſummon the jury before the commiſſioners in a commiſſion of ideocy or lunacy, and attending thereon	2 2 0		
For the return of a *Venire facias jur'* and attending the trial of a traverſe at the ſeſſions of the peace on every indictment, except for felony, or where the defendant is in priſon		0 10 0	
N. B. The ſheriff ſummonſes, impanels and returns 8 grand juries in the year, at the ſeveral ſeſſions of the peace at *Hicks's hall*, and attends by his deputy during all the time of the ſeſſions there, and alſo returns 8 juries in the year at the ſeveral ſeſſions at the *Old Baily*, beſides party juries and juries of matrons; and attends there without any other fee or reward whatſoever			
For a bill of ſale of goods on a *Fieri facias*, and an inventory thereunto annexed		0 9 0	
For a bill of ſale of a term of years		0 13 4	
The like on a *Venditioni exponas*		0 13 4	
For allowing a writ of *Non ponend. in aſſiſ.*		0 13 4	
For charging a defendant in cuſtody with every other writ than that on which he is arreſted		0 2 4	
For a certificate in order for a *Superſed.*		0 2 4	
For a certificate that the defendant is in execution in order for his diſcharge by the late act of parliament		0 2 4	
For his diſcharge by the rule of court thereon	Nothing		
For attending with writs and other things out of the office, to be produced on trial, for each day's attendance		0 6 8	

For

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For the plaintiff's discharge on every writ of *Fieri facias*, whereon money has been levied, or on a *Capias ad satisfaciend.* executed on the defendant, and on every writ on which the defendant is committed to the gaol		0 2 4	
For searching the books and files, and a warrant to the keeper of *Newgate* to discharge the defendant out of custody		0 2 4	
N. B. The defendants are oftner discharged out of *Newgate* without paying any fees than with. Copies of writs are given, and searches are made for prisoners in *Newgate* without any fees for the same.			
For every search		0 0 4	
For a short copy of a writ in order to put in bail by		0 0 6	
For searching for a writ in force; which is never done but upon the undertaking of some attorney to put in bail thereto		0 1 0	
For a copy of a bill of *Middlesex*, *Capias* or *Quo minus* at length		0 1 0	
For copies of all writs or other things, for every sheet of copy wrote		0 0 6	
For executing and returning a writ of false judgment, or *Accedas ad cur'*		0 6 8	

Fees for executing a writ of *Ad quod damnum* cannot well be settled, but must be left to the sheriff and the party to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies, or where the intended fair or market is to be held; which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of partition cannot well be settled for the same reason; and a provision is made by *Stat.* 8 & 9 *W.* 3. *c.* 31. for settling the same in case the sheriffs and the parties cannot agree.

For

	Sheriff.	*Clerks.*	*Total.*
	l. *s.* *d.*	*l.* *s.* *d.*	*l.* *s.* *d.*
For attending lord mayor, as conſervator of the river *Thames*; making warrants on the writs of *Capias*, and ſummons and returning the ſame, and for ſummoning, impanelling and returning the grand jury at the firſt court in every year, the water-bailiff pays		1 1 0	
For attending the lord mayor at the ſecond court in every year, and returning the ſummons and *Capias* proceſs, the water-bailiff pays		0 10 6	
For ſummoning, impanelling, and returning the traverſe jury, and attending the trials there, which very rarely happens		0 10 0	
For returning, ſummoning and impanelling a jury, and attending commiſſioners in a commiſſion out of the *Exchequer* to find debts		0 10 0	
For the like on a forcible entry before two juſtices, which happens but very ſeldom		0 10 0	
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24 *March* 1732.

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The End of the FIRST VOLUME.

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